TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1927

No. 263

ST. LOUIS & SOUTHWESTERN RAILWAY COMPANY, APPELLANT,

vs.

J. H. NATTIN, TAX COLLECTOR, CONSOLIDATED ROAD DISTRICT OF THE PARISH OF BOSSIER, LOUISIANA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA

FILED MAY 23, 1927

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[fol. 1]

IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA

No. 278

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Complainant,

versus

J. H. NATTIN, Tax Collector, Consolidated Road District of the Parish of Bossier, Louisiana

BILL OF COMPLAINT AND ORDER TO SHOW CAUSE—Filed January 3, 1927

To the Honorable Ben C. Dawkins, Judge of the United States District Court for the Western District of Louisiana:

The complainant, St. Louis Southwestern Railway Company, respectfully shows that it is now and was at all times hereinafter mentioned, a railway corporation organized under the laws of the State of Missouri, and brings this, its bill of complaint, against J. H. Nattin, Tax Collector in and for the Parish of Bossier, Louisiana, and also against the Consolidated Road District of the Parish of Bossier, Louisiana, whereof J. G. McDade is President and who is a resident of Bossier Parish, Louisiana, all within the Western District of Louisiana, and thereupon your complainant shows:

1

That it owns and operates a railway line through the States of Missouri, Arkansas and Louisiana and operates a branch line of its railroad from Lewisville, Arkansas to Shreveport, Louisiana, a large portion of which branch line runs through and is in the Parish of Bossier, said State, and embraced in said Consolidated Road District of the Parish of Bossier, Louisiana.

2

Complainant further states that this controversy is a suit of a civil nature between citizens of different states

and that the amount in controversy exceeds the value of Three Thousand Dollars ($3,000.00) exclusive of interest.

3

That the Consolidated Road District of Bossier Parish, Louisiana, was attempted to be created under Act 148 of the General Assembly of the State of Louisiana for the [fol. 2] year 1921 and claims to be a body politic, incorporated in the Parish of Bossier, State of Louisiana and a citizen and inhabitant of said Parish and State during all of the time hereinafter mentioned, with its principal office in said District in the Town of Benton, Bossier Parish, Louisiana, and within the Western District of Louisiana.

4

That under a pretended ordinance of the Police Jury of Bossier Parish, creating said Consolidated Road District, the Police Jury of said Parish, composed of J. G. McDade, Chairman and R. C. Purcell, R. E. McDade, S. E. Mays, W. B. Wilbourn and L. M. Burke, Jurors, constitute the Board of Control of said Consolidated Road District of Bossier Parish, Louisiana.

5

Your complainant shows that the territory embraced in said attempted and pretended road district includes practically all of the territory within the Parish of Bossier and pretends to be a consolidation of three existing road districts, with the addition of additional territory and only excludes from said district small strips or portions of land as indicated on a map thereof, which is hereto attached and made part hereof.

6

Your complainant further shows that the said Consolidated Road District, through its Commissioners, as aforesaid, have formed plans for the improvement contemplated thereby, which plans include the construction of a number of miles of hard surface or gravel roads in said District, the estimated cost of which amounts to One Million, Six Hundred and Thirty Thousand Dollars ($1,630,000.00), less

One Hundred and Fifty-seven Thousand Dollars ($157,000.00) for original Road District No. 2, and Forty-two Thousand, Five Hundred Dollars ($42,500.00) for original Road District No. 3, and in pursuance of said plan, in order to raise the necessary money for said contemplated improvement, the said District has issued bonds in the sum of One Million, Three hundred, Eighty-nine Thousand, Five Hundred Dollars ($1,389,500.00) and in order to meet [fol. 3] the annual interest on said bonds and to pay said bonds when they mature, have levied a tax or special assessment against the property of your complainant in said District of seven mills (7) for the year 1926.

7

That the said special assessment so levied against the property of your complainant in said Road District for the year 1926 amounts to the sum of Seven Thousand and Three and 08/100 ($7,003.08) Dollars and J. H. Nattin, Tax Collector of Bossier Parish, charged with the collection of the taxes due said Consolidated Road District under the laws and statutes of the State of Louisiana is demanding of your complainant the payment of said taxes so claimed by said Consolidated Road District of Bossier Parish, as aforesaid.

8

That the various roads proposed to be graveled or hard surfaced by the said Consolidated Road District in said Parish, extend in various directions, but one of them runs parallel with the railway line of your petitioner from Bossier City in the State of Louisiana, by way of Benton, to Arkana, Louisiana.

9

Your complainant further shows that it is the owner of all of the capital stock of the Shreveport Bridge & Terminal Co., a corporation organized under the laws of the State of Louisiana, with its domicile at Shreveport in the State of Louisiana, and to all intents and purposes it is the owner of said Shreveport Bridge & Terminal Company, which owns a bridge across Red River at Bossier City in the Parish of Bossier, extending to the Caddo Parish side

of said river and that it has an operating contract with said Shreveport Bridge & Terminal Company, under which and by which it contracts and agrees to pay all deficits which may occur in the operation of said Shreveport Bridge & Terminal Company, a copy of which contract is attached hereto and made part hereof.

10

That as the owner of all of the capital stock of the said [fol. 4] Shreveport Bridge & Terminal Company and under said contract for the operation of its said bridge your complainant is bound and obligated and does pay all of the taxes assessed against said Shreveport Bridge & Terminal Company in the State of Louisiana.

11

That in said Consolidated Road District there is assessed against said Shreveport Bridge & Terminal Company a tax in the sum of One Thousand, Ninety-two and 49 100 ($1,092.49) Dollars, for the year 1926 for the purpose of paying the principal of the bonds maturing in said year and interest on said bonds as hereinafter set forth, and your complainant on account of its obligation to pay the taxes on said Shreveport Bridge & Terminal Company property, as aforesaid, within the said Road District also brings this suit for and on its behalf and also seeks to restrain the collection of said road tax as against said Shreveport Bridge & Terminal Company for the reasons hereinafter set forth.

12

Your complainant now avers that the assessment of its property and that of the Shreveport Bridge & Terminal Company in said Consolidated Road District for any taxes whatsoever is illegal, void and in violation not only of the Constitution and laws of the State of Louisiana, but in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, for the following reasons, to-wit:

First. That the creation of said Consolidated Road District is made in violation of the Constitution and laws of

the State of Louisiana, in that it embraces the entire Parish of Bossier with but slight exception, which exceptions your complainant charges are but a pretense and a sham, made for the purpose of evading Article 14, Section 14 of the Constitution of said State of Louisiana, which prohibits the creation of a road district which shall comprise the whole territory of a Parish.

Second. That the said seven (7) mill tax levied by the said Consolidated Road District for the year 1926, contains, [fol. 5] as your complainant is advised and believes and therefore avers two mills for the purpose of paying the interest on said bonded indebtedness for the year 1927, in violation of said Act 118 of 1921 and in violation of the Constitution of the State of Louisiana, which prohibits the levy of a tax in any year more than is necessary for the payment of the interest and principal of the bonds due in such year, and that the only tax necessary to be levied for the year 1926 for the payment of said interest and bonds due said year is five mills on the dollar and that the inclusion of said extra two mills for the year 1926 in order to pay the interest on said bonds for the year 1927 is illegal, null and void.

13

Your complainant shows that by said system of improvement in said Parish and the construction of said gravel or surfaced roads, that the market or physical value of its property and that of the Shreveport Bridge & Terminal Company, located in said District will not be increased and will not be benefited in any amount whatsoever by the construction and maintenance of said roads as proposed and the effort to tax its property or that of the said Shreveport Bridge & Terminal Company for the purpose of paying the cost of constructing such road or the maintenance thereof is without any benefit or value to either it or the said Shreveport Bridge & Terminal Company and amounts to taking their property without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States. That said roads will not now or ever be of any benefit to complainant or said Shreveport Bridge & Terminal Company, but will always be injurious to them in that such roads will furnish the means or

routes for trucks, automobiles and other similar vehicles operating without charge or tolls imposed on them, to carry freight and passengers in competition with complainant and said Bridge Company and to their manifest injury and damage.

14

Your complainant further shows that its property in said [fol. 6] Consolidated Road District is assessed at the sum of One Million Four Hundred and Forty Dollars ($1,000,440,00) and that of the Shreveport Bridge & Terminal Company is assessed at the sum of One Hundred, Fifty-six Thousand and Seventy Dollars ($156,070,00), and that such assessment of its property and that of said Bridge & Terminal Company is exorbitant, arbitrary and unlawful, for the reason that neither of them will receive any benefit whatever from the construction and maintenance of their said roads and for the further reason that the assessment of their respective properties in said District for the purpose of paying the said bonds and interest thereon is at its practical cash value, whereas the farm lands and other property in said district is assessed at a much lower rate and thereby, in any event, discriminates against your complainant and the said Shreveport Bridge & Terminal Company and deprives them of their property without due process of law, in violation of the said Fourteenth Amendment to the Constitution of the United States. That said assessment and levy of their said properties in said road district is arbitrary and discriminatory as compared with the assessment made by the said road district upon other property within said district, thereby imposing upon *upon* complainant and the said Shreveport Bridge & Terminal Company a grossly unequal and disproportionate share of the cost of said improvement, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

15

Complainant further shows that all of its property located within said Consolidated Road District is an integral part of an interstate transportation line and that all of the same is used constantly in the transportation of interstate commerce, and that the property of the said Shreveport Bridge

& Terminal Company is likewise so used and that said assessment so made by the said Commissioners of said Road District, unlawfully burdens such interstate commerce by imposing upon the revenues accruing therefrom an unlawful, unjust and discriminatory tax in violation of Sec-
[fol. 7] tion 6, Article 1 of the Constitution of the United States providing for the regulation of commerce between the States.

16

Your complainant further shows that instead of the said proposed improvements to be made by said Road District being a benefit to its or the Shreveport Bridge & Terminal Company's property within said District, such improvements have resulted and will result in great damage to their property and render the same less productive in that the said gravel or hard surface road to be constructed parallel with its said line of railway will be used by trucks or other means of conveyance in competition with your complainant and will decrease the amount of the traffic moving on its said line throughout the entire length of said road district between Arkana, Louisiana and Bossier City, Louisiana, and that the said injury to its said property will be material and substantial, and to require it or the said Shreveport Bridge & Terminal Company to contribute to the construction of what in fact amounts to a competing transportation system is in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States and deprives it of its property without due process of law, and divests it of its vested rights.

17

Your complainant further shows that the said Act of the Legislature of the State of Louisiana, authorizing the creation of said Road Districts, makes no provision whatsoever for a hearing at any time or place by any taxpayer affecting the validity or amount of taxes to be assessed against property located within such road district and, therefore, your complainant and the said Shreveport Bridge & Terminal Company were deprived of any hearing before any Board or persons whatsoever as to whether said tax so levied in aid of the construction and maintenance of said

road would be of any benefit whatever to them, thus depriving them of their property without due process of law, in violation of the Constitution of the United States and par-
[fol. 8] ticularly the Fourteenth Amendment thereto.

18

Your complainant further shows that it, for itself and on behalf of the said Shreveport Bridge & Terminal Company, has tendered to J. H. Nattin, Tax Collector for said District all of the other taxes assessed against their said property located within said district and has offered to pay him all of the said lawful taxes assessed against their respective property, but he declines and refuses to accept the same, unless your complainant also pays the amount of taxes levied by the said Consolidated Road District as aforesaid and threatens that unless your complainant and the said Shreveport Bridge & Terminal Company pays such Consolidated Road District tax as aforesaid, to advertise for sale their respective properties located in said District, for the payment of said taxes so illegally assessed against their said property.

19

Your complainant further shows that the said J. H. Nattin, Sheriff & Tax Collector of Bossier Parish, and Ex-Officio Tax Collector of said Road District, will proceed to advertise for sale the properties belonging to your said complainant and the said Shreveport Bridge & Terminal Company for the payment of said illegal taxes so levi*ed* by said Consolidated Road District, unless restrained by your writs of injunction and in as much as under the laws of the State of Louisiana taxes become delinquent on the 31st day of December of each year, will proceed to advertise and sell their said properties for said illegal taxes in the meantime until a hearing can be had hereof, unless restrained by a restraining order from this Honorable Court and that the said Consolidated Road District, through its said President, J. G. McDade, will attempt to collect said taxes unless restrained by said restraining order and by a temporary writ of injunction herein, which should issue to your complainant on its making bond as required by law.

[fol. 9] 20

Your complainant further shows that for the reasons and things hereinbefore set forth, the said Consolidated Road District of Bossier Parish never attained any corporate existence or acquired any rights to levy taxes or perform any act whatever, because created so as to include the entire Parish, in violation of the Constitution and laws of Louisiana and its attempted creation was utterly null and without any legal effect. But even if legally organized, then in the alternative it shows its attempt to levy any tax or assessment on or against its property or that of the Shreveport Bridge & Terminal Company in said road district is null and illegal for the reasons herein stated and violative of the Fourteenth Amendment and Article 6 of the Constitution of the United States. But further in the alternative, it shows even if such district was legally organized and even if such property of complainant and the Shreveport Bridge & Terminal Company may be subjected to said special tax or assessment, then in any event it shows said road district is without right or authority to levy and collect for the year 1926 two (2) mills of said seven (7) mills levy to pay the interest on the said bonded debt for the year 1927, and to that extent if no other, said levy of said special tax is void.

21

Complainant shows that said illegal tax or assessment in said road district, of its property and that of the Shreveport Bridge & Terminal Company, will continue annually to and including the year 1965 and for each year said road district will illegally assess their property therein and collect thereon for each year not less than five mills on the dollar of its assessed valuation, aggregating for each of them more than fifty thousand dollars.

The premises considered, your complainant prays that the defendants, J. H. Nattin, Tax Collector, and the Consolidated Road District of Bossier Parish, Louisiana, through its President, J. G. McDade, be summoned as provided by law and that they be required to answer hereto [fol. 10] and that a temporary restraining order be granted

to your complainant restraining the said Tax Collector and the said Road District from levying, assessing or attempting to collect the said road taxes for the year 1926, based upon the assessment against its property and that of the said Shreveport Bridge & Terminal Company in said District and upon a final hearing thereon, that the action of said Road District in making the assessment against its property and that of the Shreveport Bridge & Terminal Company, within said District be declared illegal and void and that such assessment be set aside as in violation of due process of law, or for the reasons hereinbefore set forth, and that a writ of injunction issue directed to the said J. H. Nattin, Tax Collector and to the said Consolidated Road District of Bossier Parish, Louisiana, enjoining and restraining them and each of them from levying or assessing any special tax or assessment against the property of your complainant and that of the Shreveport Bridge & Terminal Company and for such other general relief as the complainant may, in good conscience be entitled to under the foregoing facts and law and for all of which it shall ever pray.

J. R. Turney, Wilkinson, Lewis & Wilkinson, Solicitors for Complainant.

Duly sworn to by J. D. Wilkinson. Jurat omitted in printing.

[fol. 11] Order to Show Cause

On considering the above and foregoing bill of complaint and by reason of the law, it is ordered that J. H. Nattin, Sheriff & Tax Collector for the Parish of Bossier and the Consolidated Road District of Bossier Parish, Louisiana, through its President, J. G. McDade, show cause at New Orleans, La. January 13th, 1927, at 11:00 O'clock A. M. why they should not be enjoined from collecting or attempting to collect the said road tax as set forth in said bill of complaint or from advertising for sale, or attempting to sell the property of the complainant or the Shreveport Bridge & Terminal Company for the payment of said tax,

said hearing to be before and by Circuit Judge Rufus E. Foster and District Judges Dawkins and Burns.

Done and signed on this the 31st day of December, 1926.

(Signed) Ben C. Dawkins, Judge.

[File endorsement omitted.]

Exhibit to Bill of Complaint—Filed January 3, 1927

This agreement, made and entered into this first day of January, 1925, between Shreveport Bridge & Terminal Company, herein called "Lessor," first party, and St. Louis Southwestern Railway Company, herein called "Lessee," second party, Witnesseth:

1. In consideration of the Lessee's covenants, Lessor grants the joint use of its entire railroad and bridge facilities, wherever located, subject to Lessor's exclusive control, but in common with such other joint users as Lessors may permit to participate therein, for a term of one year and thereafter from year to year until cancelled by either party upon thirty days' notice prior to the beginning of any yearly term, of its desire to terminate the same.

[fol. 12] 2. In consideration whereof, Lessee covenants and agrees that it will, and its successors and assigns shall

2. 1. Pay Lessor on the first day of January in each year during the term hereof, an amount of money representing the difference by which the Lessor's total gross expenditures during the preceding year for all purposes whatsoever shall exceed the total gross income received from all sources whatsoever, of said Lessor, during such preceding calendar year.

2. 2. Indemnify the Lessor against all liability for damages, including injuries to persons and property, deaths and expenses incident thereto, arising during or by reason of the construction, use, abandonment, operation or maintenance of the facilities of the Lessor by the Lessee, however, the same may be occasioned.

In testimony whereof, the parties hereto have hereunto set their hands and seals on the day and year first above written.

Shreveport Bridge & Terminal Company, by (Sd.) Daniel Upthregrove. Attest: (Sd.) Charlton Messick, Secretary. St. Louis Southwestern Railway Company, by (Sd.) F. W. Green. Attest: (Sd.) Charlton Messick, Asst. Sec'y.

Form approved: (Sd.) J. P. Turney, General Solicitor.

[File endorsement omitted.]

(Here follows Exhibit to Bill of Complaint, marked side folio page 13.)

[fol. 14] IN UNITED STATES DISTRICT COURT

AMENDED COMPLAINT AND ORDER FILING SAME—Filed January 19, 1927

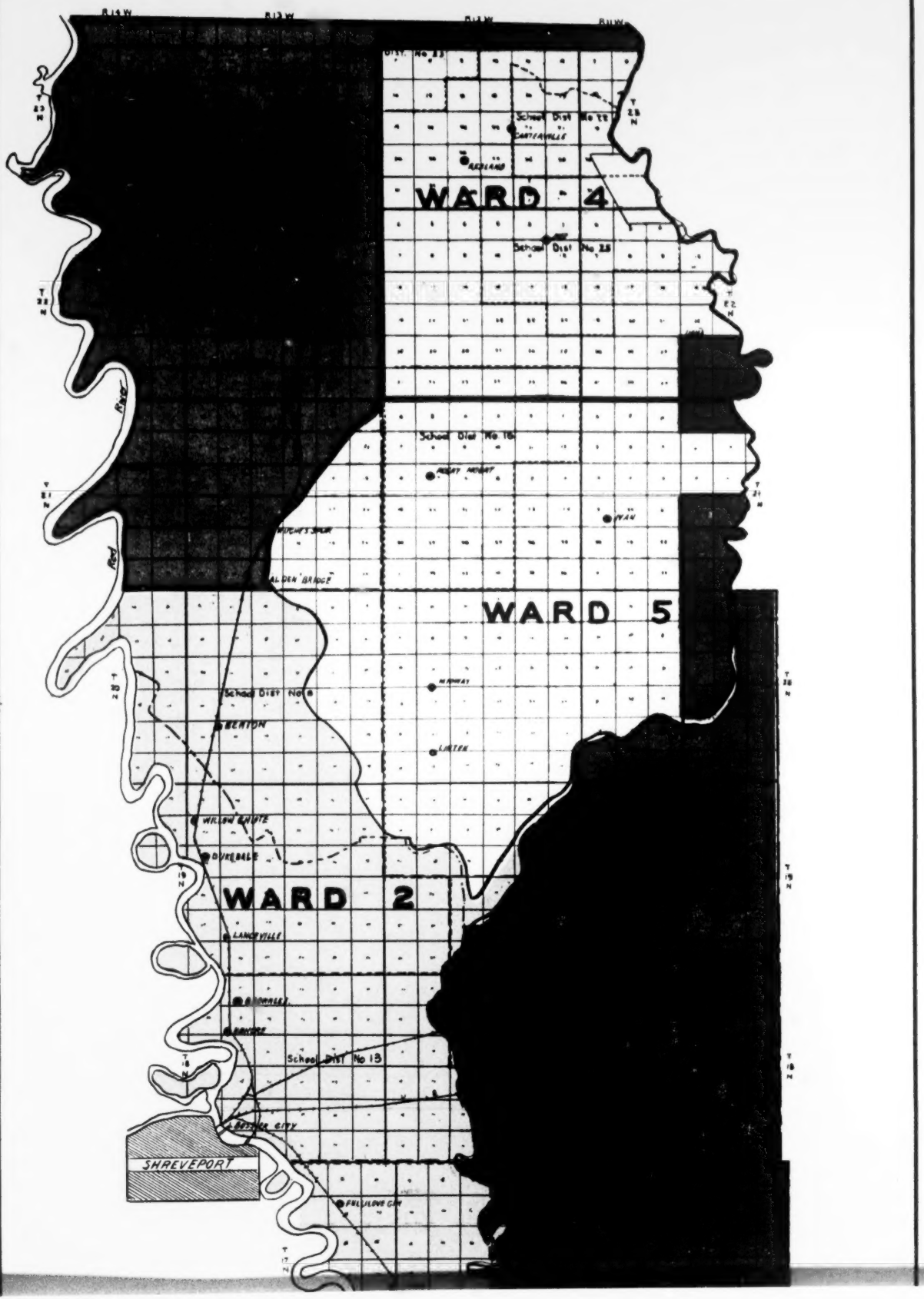
1

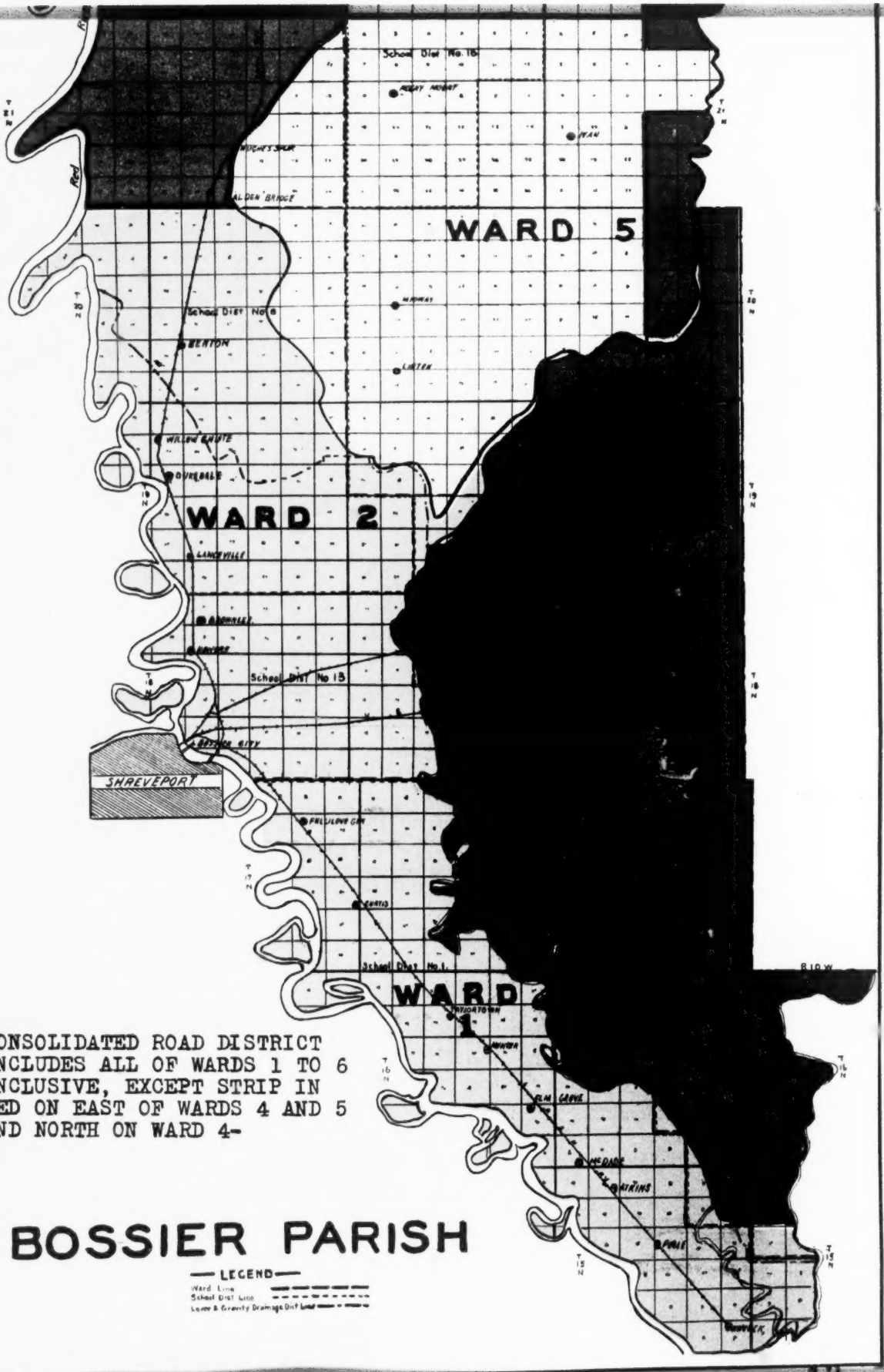
Now comes the complainant in the above entitled and numbered cause, the St. Louis Southwestern Railway Company, and adopting all of the allegations and the facts in its original complaint herein filed, shows unto the Court that certain clerical errors were made in the writing of Paragraphs 15 and 20 of its original complaint and it, therefore, begs leave of the Court to amend the said paragraphs so as to read as follows:

15

Complainant further shows that all of its property located within said Consolidated Road District is an integral part of an interstate transportation line and that all of the same is used constantly in the transportation of interstate commerce, and that the property of the said Shreveport Bridge & Terminal Company is likewise so used and

EXHIBIT TO BILL OF COMPLAINT




School Dist No. 16
WARD 5
School Dist No 6
BENTON
WILLOW CHUTE
WARD 2
School Dist No 13
SHREVEPORT
School Dist No 1
WARD
CONSOLIDATED ROAD DISTRICT
INCLUDES ALL OF WARDS 1 TO 6
INCLUSIVE, EXCEPT STRIP IN
RED ON EAST OF WARDS 4 AND 5
AND NORTH ON WARD 4-
BOSSIER PARISH
LEGEND
Ward Line
School Dist Line
Levee & Gravity Drainage Dist Line

that said assessment so made by the said Commissioners of said Road District unlawfully burdens such interstate commerce by imposing upon the revenues accruing therefrom an unlawful, unjust and discriminatory tax in violation of Section 8, Article 1 of the Constitution of the United States providing for the regulation of commerce between the states, and denies petitioner equal protection of the laws guaranteed by the 14th Amendment to the U. S. Constitution.

20

Your complainant further shows that for the reason and things hereinbefore set forth, the said Consolidated Road District of Bossier Parish never attained any corporate existence or acquired any rights to levy taxes or perform any act whatever, because created so as to include the entire Parish, in violation of the Constitution and laws of Louisiana and its attempted creation was utterly null and without any legal effect. But even if legally organized, then in the alternative it shows its attempt to levy any tax or assessment on or against its property or that of the Shreveport Bridge & Terminal Company in said Road District is null and illegal for the reasons herein stated, [fol. 15] and violative of the Fourteenth Amendment and Article 1, Section 8, of the Constitution of the United States. But further in the alternative, it shows even if such district was legally organized and even if such property of complainant and the Shreveport Bridge & Terminal Company may be subjected to said special tax or assessment, then in any event it shows said Road District is without right or authority to levy and collect for the year 1926 two (2) mills of said seven (7) mills levy to pay the interest on the said bonded debt for the year 1927, and to that extent, if no other, said levy of said special tax is void.

II

That it desires to amplify and amend paragraph 8 of its original complaint to read as follows:

8

That the various roads proposed to be graveled or hard surfaced by said Consolidated Road District in said Parish

extend in various directions, many of said roads converging at the Bossier City traffic bridge leading into the City of Shreveport where other railroads and motor bus lines compete with complainant in freight and passenger traffic business.

That one of said roads to be improved in said District runs parallel with the railway line of petitioner from Bossier City, Louisiana, by way of Benton to Arkana, Louisiana.

III

That it desires to amplify and amend paragraph 10 of its original complaint to read as follows:

10

That as the owner of all of the capital stock of the said Shreveport Bridge and Terminal Company complainant is virtually the owner of the property of said Company, and under said contract for the operation of its said bridge your complainant is bound and obligated to pay and has always paid all taxes assessed against the said Shreveport Bridge and Terminal Company in the State of Louisiana. [fol. 16] That the practical effect of said agreement has always been to require complainant to pay said taxes, and the said Bridge Company therefore is not a real party in interest as to this proceeding.

That complainant has been fully authorized to represent whatever interest said Bridge Company may have in this proceeding, and to sue in its behalf therefor, and has fully subrogated complainant to its rights and obligations in all taxes due and payable in the State of Louisiana.

Premises considered, your complainant prays that this supplemental and amended complaint be filed and allowed, and that a writ of injunction issue herein, as prayed for in the original bill of complaint herein filed; for all orders and decrees necessary, for full, general and equitable relief which the complainant may, in good conscience, be entitled to under the facts and the law, and for all of which it shall ever pray.

Wilkinson, Lewis & Wilkinson, J. R. Turney, Solicitors for Complainant.

Duly sworn to by W. S. Wilkinson. Jurat omitted in printing.

[fol. 17] Order

Let the above and foregoing amended bill of complaint be filed and allowed, according to law.

Done and signed this 19 day of January, 1927.

Rufus E. Foster, Judge.

Acceptance of service omitted in printing.

[File endorsement omitted.]

[fol. 18] In United States District Court

Motion to Dismiss—Filed January 19, 1927

J. H. Nattin, Tax Collector, and Consolidated Road District of the Parish of Bossier, Louisiana, made defendants herein, appearing through their solicitors, Milling, Godchaux, Saal & Milling and A. M. Wallace, specially and solely for the purpose of this motion, now move this Honorable Court to recall the rule herein issued and dismiss the bill of complaint upon the following grounds to-wit:

I

(a) The allegations of the bill of complaint herein disclose the fact that Shreveport Bridge & Terminal Company is the owner of certain of the property against which the tax sought to be enjoined has been levied and assessed; that said Shreveport Bridge & Terminal Company has not been made a party plaintiff to said proceedings, though it has an interest therein; that said bill does not disclose that demand has been made upon the said Shreveport Bridge & Terminal Company by the complainant that it institute such proceedings as required by Equity Rule No. 27; that, consequently, the said complainant has no such interest as would entitle it to institute this proceeding on behalf of said Shreveport Bridge & Terminal Company.

(b) In the alternative, and only in the event this Honorable Court should hold that the said complainant has an interest to institute the proceeding insofar as concerns the property of Shreveport Bridge and Terminal Company, then defendants show further unto this Honorable Court that the said Shreveport Bridge and Terminal Company is an indispensable and necessary party plaintiff in this proceeding; and that it should be required to join as party plaintiff herein, and it being within the jurisdiction of this Honorable Court and available for joinder as defendant, if it should refuse to join as plaintiff herein, then that it should be joined herein by order of this Honorable Court.

II

Reserving the benefit of the above grounds herein urged [fol. 19] for the dismissal of the bill of complaint, your defendants show that the allegations of said bill of complaint are so vague and general that they are not sufficient in themselves to support the claim for the relief sought in the bill of complaint, and are not sufficiently specific for your defendants to be able to intelligently answer same.

III

Reserving the benefit of the above grounds herein urged for the dismissal of the bill of complaint, your defendants show that the bill of complaint filed herein does not set forth or disclose a ground or right in equity for the issuance of a preliminary injunction herein, nor does it set forth a ground or right which would entitle the complainant to the relief sought by it in said bill of complaint, and, for this reason, the said bill should be dismissed.

IV

For the above reasons the bill of complaint herein should be dismissed.

Wherefore, for the reasons above set forth, defendants pray the Court to recall the rule herein issued and to dismiss the bill of complaint.

Defendants further pray for all such other and further remedy and relief as the nature of this case may require, and that law and equity will permit.

Milling, Codchaux, Saal & Milling, Solicitor-, & A. M. Wallace, Solicitor. R. C. Milling, A. M. Wallace, R. E. Milling, Jr., of Counsel.

[File endorsement omitted.]

[fol. 20] In United States District Court

Answer—Filed January 19, 1927

Into this honorable court, through undersigned counsel, comes J. H. Nattin, Tax Collector of the Parish of Bossier, and Consolidated Road District of the Parish of Bossier, Louisiana, made defendants herein, who, reserving the benefits of the Motion to Dismiss, and insisting that said motion be tried and disposed of prior to the consideration of the merits of the bill of complaint herein filed, now, by way of further plea and defense to the rule herein, and to the bill of complaint filed by the complainant, show unto this Honorable Court as follows:

A

Before answering seriatim the allegations of the Bill of Complaint herein, defendants show to the Court that under the laws of the State of Louisiana, this complainant has no right to institute this action at this time, and that said right of action, if same ever existed, which is denied, is now prescribed, and preempted, for the following reasons, to-wit:

(a) Your defendants show that the seven (7) mills on the dollar, levied and imposed by the Police Jury of the Parish of Bossier, as the Governing authority of Consolidated Road District of the Parish of Bossier, was levied and imposed and assessed for the sole and only purpose of paying the principal and interest due upon certain bonds issued by Consolidated Road District of the Parish of Bossier, to evidence a debt of $1,630,000.00, incurred by the

Police Jury of the Parish of Bossier as the governing authority of said Consolidated Road District for the Parish of Bossier, which debt was incurred, and which bonds were issued under authority of a vote of the property tax payers entitled to vote under the Constitution and Laws of the State of Louisiana, in an election held in said Consolidated Road District of the Parish of Bossier on December 22nd 1925, after due notice published in the Official Journal of said Parish for a period of thirty (30) days, as required by the Constitution and laws of the State of Louisiana, and at which election a majority of the property tax payers, qualified to vote under the Constitution and laws of the State of Louisiana, in number and amount, did vote in favor of the issuance of said bonds; that the results of said election were duly promulgated by [fol. 21] the Police Jury of the Parish of Bossier, acting as the governing authority of said Consolidated Road District of the Parish of Bossier at a meeting held on December 29th, 1925, and that the results of said election were duly promulgated by publication in the Official Journal of the Parish of Bossier, in the "Bossier Banner," in the issue of date December 31st, 1925; that subsequent to sixty (60) days from the date of said promulgation of said election, the bonds authorized at said election were offered for sale, after due advertisement, on March 9th, 1926, and were purchased by the Commercial Securities Company, Caldwell & Company and Whitney-Central Trust and Savings Bank of New Orleans, Louisiana; that said bonds were duly signed by the proper officers of said Consolidated Road District, and were certified to by the Secretary of State of the State of Louisiana at the time and in the manner provided by Section 34 of Act 46 of the Acts of the General Assembly of the State of Louisiana for the year 1921, and were sealed with the great seal of the State of Louisiana. That said bonds contained a recital of regularity as required by Section 33 of Act 46 of the Acts of the General Assembly of the State of Louisiana for the year 1921; that the said bonds have been delivered to the purchasers and payment has been received therefor and the bonds are now in the hands of innocent holders and, under Section 42 of Act 46 of the General Assembly of the

State of Louisiana for the year 1921 have the quality of negotiable paper under the law merchant; that, thereafter, to-wit, August 10th, 1926, the Police Jury of the Parish of Bossier, acting as the governing authority of said Consolidated Road District of the Parish of Bossier, did levy and impose against all property subject to taxation in said Consolidated Road District of the Parish of Bossier, Louisiana, for the year 1926, a tax of seven mills on the dollar, and did order the Assessor of the Parish of Bossier to extend said tax upon the Rolls for the year 1926, and did order the tax collector to collect same; that a copy of said ordinance was duly published in the "Bossier Banner," the Official Journal of the Parish of Bossier, in the manner required by law; that is, in the issue of said newspaper from the 19th day of August 1926 to Sept. 23, 1926; that all of the above facts and incidents were effected prior to the institution of this action by the said complaint herein.

[fol. 22] (b) That under the Constitution and laws of the State of Louisiana, and particularly Paragraph "n" of Section 14 of Article XIV of the Constitution of the State of Louisiana for the year 1921, and Section 43 of Act 46 of the Act of the Legislature of the State of Louisiana for the year 1921, and Sections 33, 34, 35 and 42 of said Statute, Act 46 of 1921 and Section 11 of Act 118 of the General Assembly of the election, the bonds or the tax levied, imposed and assessed for the purpose of paying said bonds or the tax levied, imposed and assessed for the purpose of paying said bonds in principal and interest, was limited to sixty (60) days from the date of the promulgation of the result of the election, and that, as the said complainant did not avail itself of the right to institute such action within the time thus fixed by law, the complainant's right to launch this proceeding and to attack the validity of said tax is now prescribed, and is barred by the Constitutional and statutory limitation of sixty days, and defendants now especially plead, in bar of complainant's action, the constitutional and statutory preemption and prescription of sixty (60) days, as provided by the Constitution and laws of the State of Louisiana, as particularly above enumerated.

(c) Defendants further show that it is provided by Section 43 of Act 46 of the General Assembly of the State of Louisiana for the year 1921 that

"If any resolution be adopted or proceeding had, more than thirty (30) days after the promulgation of the result of the election, no contest, action or proceeding to question the validity or legality of such resolution or proceeding so adopted, shall be begun in any court by any person for any cause whatsoever, after the expiration of thirty (30) days from the date when the resolution was adopted, or proceeding had."

That more than thirty (30) days have transpired since the promulgation of the result of the election held in said Consolidated Road District on the 22nd day of December, 1925; [fol. 23] that this proceeding was not instituted within the said thirty (30) day period, and that no such proceeding may now be instituted, and defendants now further especially plead, in bar of complainant's action, the preemption or prescription of thirty (30) days as provided by Section 43 of Act 46 of 1921.

(d) Defendants further show unto this Honorable Court that the assessments of property belonging to said complainant herein and to said Shreveport Bridge & Terminal Company, appear upon the General Assessment Rolls of the Parish of Bossier, which is the roll based upon which all taxes, State, Levee, Parish and Local are collected, and that the valuations for said purposes were fixed by the Louisiana Tax Commission, after due notice and hearing, and that the property of other taxpayers which is complained of was fixed after notice and hearing by the Assessor of the Parish of Bossier, the Parish Board of Equalization, the Louisiana Tax Commission, and the Police Jury of the Parish of Bossier, sitting as a Board of Reviewers. That the assessment rolls were filed with Clerk of Court of the Parish of Bossier on October 6, 1926, and that under the law of the State of Louisiana, particularly Act 97 of 1924, the said complainant, if it made the return required by law, or any person at interest making such returns, had the right to resort to the Courts within thirty (30) days following the date of the filing of said rolls for the purpose of contesting the correctness or legality of any assessment

made against the property listed on said return, but that the said complainant did not avail itself of this right, and that such right of action to question, in any manner, the correctness or legality of said assessment is now prescribed by the said period of thirty (30) days, which prescription defendants now especially plead.

(c) Defendants now show that they again especially plead the prescriptions and preemptions of sixty (60) and thirty (30) days, respectively, under the Louisiana constitution and statutes as above set forth, and further show that based thereon, the rule herein issued should be recalled and [fol. 24] the demand of complainant rejected.

B

Reserving the benefits of the above pleas, and insisting that same be considered and passed upon prior to the consideration of the merits, Defendants now, by way of specific answer to the allegations of the bill of complaint filed herein, respectfully show as follows:

In answer to the first unnumbered paragraph of said bill of complaint defendants admit that the St. Louis and Southwestern Railway Company is a corporation organized under the laws of Missouri, and that the defendant J. H. Nattin is Tax Collector of the Parish of Bossier, and that the defendant J. G. McDade is President of the Police Jury of the Parish of Bossier, the governing authority of Consolidated Road District of the Parish of Bossier, and that the said Nattin and the said McDade are within the Western District of the State of Louisiana.

II

In answer to paragraph numbered 1 of said bill of complaint, defendants admit that the said St. Louis and Southwestern Railway Company operates a line of railroad through the States of Missouri, Arkansas and Louisiana, and a branch line from Lewisville, Arkansas to Shreveport, Louisiana, and that a portion of said branch line runs through the Parish of Bossier, and through said Consolidated Road District of the Parish of Bossier.

In answer to paragraph numbered 2 of the bill of complaint, defendants show that the allegations of such para-

graph are conclusions of law, and that they are not called upon to deny or affirm the same. Should this Court require an answer, then defendants show that they deny the allegations of said paragraph.

IV

In answer to paragraph numbered three of said bill of complaint, defendants show that they deny the allegations [fol. 25] of this paragraph except as same may be admitted in the following statement:

Defendants show that Consolidated Road District of the Parish of Bossier was created under Act 118 of the Legislature of the State of Louisiana for the year 1921; is a body politic incorporated in the Parish of Bossier, and is a citizen and inhabitant of said Parish and State and has been a citizen and inhabitant of said Parish and State since its incorporation; that the principal office of said Consolidated Road District is in the town of Benton, Parish of Bossier, Louisiana, which town is located within the Western District of the State of Louisiana.

V

In answer to the paragraph numbered 4 of said bill of complaint, defendants show that they deny the allegations of said paragraph other than as same may be admitted in the following statement:

Defendants show that in or about the year 1913 the Police Jury of the Parish of Bossier created Road District No. 1 of the Parish of Bossier, comprising all of the territory embraced in Wards 1 and 2 and a portion of the territory embraced in Ward 6 of said Parish. That in the year 1915 the said Police Jury of the Parish of Bossier created a Road District known as Road District No. 2 of the Parish of Bossier, comprising that portion of Ward 6 of said Parish not included in Road District No. 1, and in the same year said Police Jury created Road District No. 3 of the Parish of Bossier, comprising those lands located within the limits of Ward 3 of said Parish, and that subsequently the said Police Jury did incur debts and issue negotiable bonds to represent same, it having incurred said debts and issued said bonds under and by virtue of

the authority of elections held in said Districts where at a majority of the property tax payers in number and amount qualified to vote under the constitution and laws of the State of Louisiana authorized the incurring of said debts and issuance of said bonds. That thereafter, to-wit, on or about November 10, 1925, the Police Jury of the Parish of Bossier, after giving notice, and after public [fol. 26] hearing, did create the Consolidated Road District of the Parish of Bossier, including therein the three (3) above-mentioned Road Districts Nos. 1, 2 and 3, and incorporating therein certain other property not theretofore included in a Road District. That said Police Jury of the Parish of Bossier was composed of: J. G. McDade, President, R. E. McDade, R. C. Purcell, S. E. Mays, W. B. Wilbourn and L. M. Burke, and that said Police Jury, under the Constitution and laws of the State of Louisiana, is governing authority of said Consolidated Road District of the Parish of Bossier, Louisiana.

VI

In answer to paragraph numbered 5 of said bill of complaint, your defendants show that they deny the allegations of said paragraph other than to admit that the greater part of the Parish of Bossier was included in said Road District, but they show that the whole of said Parish was not included therein, but that the said Consolidated Road District includes Road Districts Nos. 1, 2 and 3 hereinabove mentioned and other territory, and that the map attached to the bill of complaint shows approximately the location of said District and the lands therein included. Defendants show that said Consolidated Road District was created after a hearing and after the property taxpayers had been notified thereof, and after the property taxpayers had discussed the location of the boundaries of said District.

VII

In answer to paragraph numbered 6 of the Bill of Complaint, defendants show that they admit that the governing authority of said Consolidated Road District of the Parish of Bossier has formed plans for the improvement of said Roads in said District, with the intention of hard-surfacing

or graveling the same. Defendants further show that the estimated cost of such work will exceed the sum of $1,630,000.00, as a portion of said roads are to be constructed under the supervision of the State Highway Department of the State of Louisiana, and the Federal Government, and that the said Highway Commission and the Federal [fol. 27] Government will contribute to the construction of said roads. Defendants admit that the total bond issue authorized to be issued aggregated the sum of $1,630,000.00 which included certain refunding bonds to cover the bonds issued by Road District No. 1, aggregating the sum of $157,000.00; by Rod District No. 2 aggregating the sum of $41,000.00, and the bonds issued by Road District No. 3, aggregating the sum of $42,500.00, and that $1,389,500.00 of bonds have been issued and sold by said Consolidated Road District, and that a tax of seven (7) mills on the dollar for the year 1926 has been levied by the governing authority of said Consolidated Road District, the proceeds and avails of which said tax will be used to meet the annual interest and principal due on said bonds on the first days of March and September, 1927. Defendants further show that said tax was levied and imposed by the governing authority of said Consolidated Road District in accordance with and under the authority of the provisions of the Constitution and Laws of the State of Louisiana, which Constitution and Laws of the State of Louisiana make it the mandatory duty of said Police Jury to levy and impose said tax annually for the purpose of paying the principal and interest of said bonds when and as the same mature. Defendants further show that they deny that the tax thus levied and imposed is in the nature of a special assessment, but they show that said tax is levied and imposed upon all property alike in said District, as shown by the assessment rolls filed by the Assessor of the Parish of Bossier with the Clerk of Court, the Tax Collector of said Parish, and the Auditor of the State of Louisiana, based upon which said assessment rolls all taxes, State, Levee, Parish and Local, were levied, assessed and collected by the Sheriff and Ex-Officio Tax Collector of the Parish of Bossier, and that said tax is required to be levied and thus assessed and collected by the Constitution and Laws of the State of Louisiana.

VIII

In answer to paragraph numbered 7 of said Bill of complaint your defendants show that they admit that the tax [fol. 28] levied and imposed against complainant's property for the year 1926 is approximately $7,003.08, but they deny that said tax is a special assessment. Defendants admit that J. H. Nattin is the Tax Collector of said Parish and is charged with the collection of said taxes due said Consolidated Road District under the statutes and laws of Louisiana; that said Tax Collector is demanding payment of said tax, and that said tax is justly due.

IX

In answer to paragraph numbered 8 of said bill of complaint, your defendants show that they admit that the roads proposed to be graveled, or hard-surfaced, extend in various directions, and that one of said roads runs parallel with the line of railroad operated by the said complainant, which line of railroad runs through Bossier City, by way of Benton, to Arkana. In all other respects the paragraph as amended is denied.

X

In answer to the paragraph numbered 9 of the said bill of complaint, defendants show that they have no information as to who owns the capital stock of the Shreveport Bridge & Terminal Company, and for lack of information on the subject they deny the allegations of this paragraph. Defendants further show that they are informed that said Shreveport Bridge & Terminal Company is domiciled in the City of Shreveport, Louisiana, and they therefore admit this fact. Defendants deny that the complainant is to all intents and purposes the owner of the Shreveport Bridge & Terminal Company, but on the contrary show that said Shreveport Bridge & Terminal Company is a corporation organized under the laws of the State of Louisiana. Defendants admit that said Company owns a bridge across the Red River at Bossier City, in the Parish of Bossier, extending to the Caddo Parish line. Defendants deny that there is any operating contract between Complainant and

said Shreveport Bridge & Terminal Company for lack of information as to this fact. Defendants especially show that the copy of the contract which is attached to the bill [fol. 29] of complaint will not support the allegations contained in the said bill of complaint as to the obligations imposed upon the complainant under said contract.

XI

In answer to the paragraph numbered 10 of said bill of complaint as amended, defendants show that they deny the allegations of this paragraph.

XII

In answer to paragraph numbered 11 of said bill of complaint, your defendants show that they admit that approximately the sum of $1,092.49 represents the tax assessed against the property of the Shreveport Bridge & Terminal Company for the year 1926, which tax was levied and imposed for the purpose of paying the principal and interest of the bonds of said Consolidated Road District. Defendants deny that said complainant is bound to pay said tax, and especially deny that the said complainants may institute or bring this action for and on behalf of the Shreveport Bridge & Terminal Company, or seek to restrain the collection of said tax as against the property of said Shreveport Bridge & Terminal Company, and should this Honorable Court hold that complainant would have any standing whatever to institute such action, then defendants show that said complainant has failed to make the allegations required by Section 27 of the Equity Rules.

XIII

In answer to paragraph numbered 12 of the Bill of Complain, your defendants show that they deny the allegations of said paragraph, except such as may be hereinafter admitted.

Specifically, in answer and reply to the allegations contained in the sub-paragraph numbered "First" of the said paragraph 12, defendants show that they deny that there was any irregularity or illegality in the creation of said District. On the contrary, they show that said District was created after a hearing, in good faith, and in conformity

with the constitution and laws of Louisiana. They fur- [fol. 30] ther show that the Police Jury of the Parish of Bossier created said District; that it is not before the Court, and that by these allegations complainant seeks collaterally to attack the formation of the District, which it is not permitted to do under the law.

Specifically, in answer and reply to the allegations contained in sub-paragraph numbered "Second" of the said Paragraph 12, defendants show that they admit that the Consolidated Road District has levied a tax of seven (7) mills and same has been assessed. They admit that this tax was levied and imposed and assessed for the purpose of paying the principal and interest on the bonds due and payable on March 1st, 1927, and the semi-annual interest due and payable on September 1st, 1927, and in this connection show that said bonds are dated March 1st, 1926; that said bonds were sold by said Consolidated Road District subsequent to the sixty (60) day period of prescription following the promulgation of the election held in said District on December 22nd, 1925; that the cash proceeds of said bonds have been paid to said District; the bonds have been delivered to innocent purchasers, and the proceeds of said bonds are being used in the construction of the roads in said District. That the first payment of principal falls due March 1st, 1927; that the first payment of interest falls due March 1st, 1927; that there is a semi-annual interest payment falling due September 1st, 1927, and that the proceeds of the tax levied and imposed in said District will be used to pay the first payment of principal and interest on said bonds falling due March 1st, 1927, and the semi annual payment of interest on said bonds falling due September 1st, 1927. That taxes for the year 1927 will not be collected until subsequent to September 1st, 1927, as the assessment rolls for the year 1927 will not be filed until or or after October 1st, 1927, and that in order that the principal and interest of said bonds falling due in the year 1927 may be paid and in order that there may be no default thereon, it was necessary that the seven (7) mill tax be levied and imposed and ordered assessed and collected for the year 1926 [fol. 31] in order that money might be available to meet the principal and interest of said bonds thus due for the year 1927. Defendants further again show that the right

to attack the validity of the ordinance is prescribed and preempted under Section 43 of Act 46 of the Louisiana Legislature of 1921, and Defendants again especially plead this prescription.

XIV

In answer to paragraph numbered 13 of the Bill of Complaint your defendants show that the allegations of this paragraph are so vague and indefinite that defendants should not be required to answer same. Should this Honorable Court require an answer to said paragraph, then your Defendants show that they deny the allegations of said paragraph, and further in answer show that the construction of the road system in said Consolidated Road District will open up all of the territory of said District and make it possible for taxpayers and residents of said District to reach the railroad of said complainant with their freight, a condition which has not heretofore existed due to the fact that there were no roads over which persons, or freight, could be transported from certain portions of said District to the railroad operated by complainant. That the building of said roads will build up and improve the whole of said District; will improve the value of property in said District, and will benefit the towns located in the central portion of said District along the railroad belonging to the complainant, and that the complainant will be one of the prime beneficiaries of the benefits accruing from the construction of said road system to be constructed in said Consolidated Road District of the Parish of Bossier.

XV

In answer to the paragraph numbered 14 of the bill of complaint, your defendants show that they deny the allegations of said paragraph, other than as may be admitted in the following statement: They admit that the property of the complainant in said District has been assessed at the sum of $1,000,440.00, and that the property of the Shreveport Bridge & Terminal Company has been assessed at the sum of $156,070.00. Defendants especially deny that assess- [fol. 32] ments in said District are in any manner illegal, incorrect or discriminatory, and with reference to said assessments they further particularly show that the valua-

tions for assessment purposes of the property of the complainant and the Shreveport Bridge & Terminal Company were fixed by the Louisiana Tax Commission, the authority under the laws of Louisiana which fixes the valuation of public utilities for assessment purposes. Defendants show that they are informed and believe that returns as to valuations were made by this complainant and the said Shreveport Bridge & Terminal Company, as to the value of their property for the year 1926, and that the Louisiana Tax Commission finally fixed such valuations and fixed a date for hearing of any complaints to be urged by said complainant and said Shreveport Bridge & Terminal Company, and as no complaints were urged the valuations were immediately made final and certified to the Assessor of the Parish of Bossier with instructions to assess said property at such valuations thus fixed by said Louisiana Tax Commission. As to the assessment of other property in the District, particularly farm lands, your defendants show that these valuations were fixed in accordance with the laws of the State of Louisiana, which require and authorize a taxpayer to make return on or before April 1st as to the value of his property, which return is then either accepted or revised by the Assessor. That thereafter the Parish Board of Equalization did meet for twenty (20) days in the Parish of Bossier, after due published notice, to hear complaints and to equalize said assessments; that subsequent to that time the Louisiana Tax Commission, after published notice, fixed a hearing in the City of Baton Rouge, at which hearing any and all taxpayers could object to the valuations of any and all property fixed for assessment purposes, and that thereafter the Police Jury of the Parish of Bossier did meet in public session as a Board of Reviewers to hear complaints, said meeting having taken place after due published notice, and that after all of said hearings the rolls were finally approved and filed with the [fol. 33] Clerk of Court and the Tax Collector on October 6, 1926, in the manner as provided by law. That this complainant, or any other party at interest, was allowed thirty (30) days under the statutes of the State of Louisiana, from the date of the filing of said rolls, to protest said assessment. That this complainant did not file any such objection, and is now precluded from questioning same;

its rights so to do being prescribed, which prescription Defendants again especially plead. Defendants show further that no other taxing bodies are before this Court. That the attack herein made upon the assessments amounts to a collateral attack thereon, and complainants are not permitted under the law to collaterally attack said assessments thus made by the Louisiana Tax Commission, the Assessor of the Parish of Bossier, and the Police Jury of said Parish. Furthermore, defendants show that complainant having offered to pay all other taxes based on said assessment is now estopped from questioning its correctness, which estoppel defendants especially plead.

XVI

In answer to paragraph numbered 15 of the Bill of Complaint, as amended, your defendants show that they deny the allegations of this paragraph, other than to admit the bare fact that property belonging to the Complainant herein within Consolidated Road District is part of the main line of railroad running from Shreveport north into and through the State of Arkansas.

XVII

In answer to paragraph numbered 16 of said bill of complaint your defendants show that they deny the allegations of said paragraph.

XVIII

In answer to paragraph numbered 17 of said bill of complaint, defendants show that they deny the allegations of this paragraph, and further in answer thereto they show that the true facts are that the Police Jury of the Parish of Bossier did, on September 16, 1925, at a public session, adopt an ordinance giving notice of its intention to meet on October 13th, 1925, for the purpose of considering [fol. 34] the adoption of an ordinance creating Consolidated Road District, and calling an election therein. That the proceedings of said meeting were duly published in the "Bossier Banner," the official journal of the Parish of Bossier for one (1) issue as required by law, and that notice of the meeting to be held on October 13, 1925, was pub-

lished in three (3) issues of the said "Bossier Banner," and that on October 13th, 1925, the said Police Jury did meet in public session and did consider the formation of said Consolidated Road District, and there being certain taxpayers present who made recommendations and urged certain objections, particularly insisting that the boundaries of said Consolidated Road District be enlarged and that the bond issue be increased, the said Police Jury did adopt another ordinance giving notice of its intention to meet in public session on November 10, 1925, to consider the question of creating said District, the proceedings of which said meeting were published in one (1) issue of the Bossier Banner, the official journal of the Parish, as required by law, and said notice of intention to meet on November 10, 1925, was published in three (3) issues of said "Bossier Banner," prior to said meeting. That on November 10, 1925, the said Police Jury did meet and there being no objections urged to the creation of said Consolidated Road District, the creation of said District was confirmed and a special election was duly called to be held in said Consolidated Road District on December 22, 1925, whereat the property taxpayers in said District were authorized to vote, under the Constitution and laws of the State of Louisiana, on the question submitted as to whether said District should incur a debt in the sum of $1,630,000.00 (including Liquidation bonds to cover bond issues authorized by original Road Districts Nos. 1, 2, and 3), and notice of said election was published for thirty (30) days in the manner required by the Constitution and laws of the State of Louisiana in the "Bossier Banner," the official journal of the Parish, in five (5) weekly issues of said newspaper, and said election resulted in favor of the proposition sub-
[fol. 35] mitted, a majority in number and amount of the property tax payers qualified to vote under the Constitution and laws of Louisiana voting in favor thereof, and on December 29, 1925, the said Police Jury of the Parish of Bossier, as the governing authority of said Consolidated Road District, did duly canvass the returns and declare said election to have been carried, and did duly promulgate same in the manner required by law, the notice of said promulgation and the promulgation of said election having been published in the "Bossier Banner," the official journal

of said Parish, in one (1) issue of said newspaper of date December 31, 1925, as required by law. That on March 9, 1926, subsequent to sixty (60) days from the date of the promulgation of said election—to-wit, December 31, 1927, the Police Jury of the Parish of Bossier did, after due advertisement, accept bids for the sale of said bonds, and did sell said bonds for cash, said sale having been confirmed on March 27, 1926. That said bonds contain a declaration as to the regularity of all proceedings; were duly certified to by the Secretary of State of the State of Louisiana; were acquired by the purchasers thereof and full payment in cash made therefor, and said bonds are now outstanding in the hands of innocent purchasers. That during this whole period of time neither the complainant herein, nor the Shreveport Bridge & Terminal Company, urged any objections to the proceedings; took no action or proceedings to stay the issuance and sale of said bonds within the sixty (60) day period subsequent to the promulgation of said election, as required by the Constitution and laws of the State of Louisiana, and their right of action therefore is now preempted and prescribed, which prescription Defendants again specially plead. Not only is said action prescribed but the said complainant, in addition thereto, in good conscience, is now estopped and precluded from instituting this action at this late day, which estoppel defendants especially plead. Furthermore, defendants show that complainant, [fol. 36] under the guise of attacking the tax levied to pay the principal and interest of said bonds, seeks to collaterally attack and question the legality of the issuance of said bonds; that the bondholders are not before this Court, and in this proceeding complainant is not permitted under the law to collaterally attack the validity of said issue of bonds.

XIX

In answer to paragraph numbered 18 of said bill of complaint, your defendants show that they admit that the complainant has offered to pay all taxes other than the taxes levied by Consolidated Road District of the Parish of Bossier, and that the Tax Collector has refused to accept said payment as he refused to give a full receipt for said taxes as demanded by the said complainant.

XX

In answer to paragraph numbered 19 of said bill of complaint, your defendants show that unless said taxes are paid it is made the duty of the Tax Collector to advertise and sell the property for the payment thereof. Defendants deny all other allegations of this paragraph, and especially deny that an injunction should issue herein.

XXI

In answer to the paragraph numbered 20 of said bill of complaint your defendants show that they deny the allegations of this paragraph, and especially deny that this Court has any jurisdiction to consider the demand as therein set forth.

XXII

Defendants further show that under the statutes of the State of Louisiana and particularly Section 56 of Act 170 of 1898, attorneys' fees in the sum of ten per cent (10%) of the aggregate amount of taxes and penalties involved herein should be allowed by judgment of this Honorable Court, and that judgment should be rendered accordingly.

Wherefore defendants pray that the rule herein issued be recalled, and that the bill of complaint be dismissed at [fol. 37] the cost of the complainant, including ten per cent (10%) as attorneys' fees on the total amount of the taxes herein enjoined.

Defendants further pray for all such other and further remedy and relief as the nature of this case may require and that law and equity will permit.

J. H. Nattin, Sheriff and ex-Officio Tax Collector of the Parish of Bossier, Louisiana. Consolidated Road District of the Parish of Bossier, by J. G. McDade, President. Milling, Godchaux, Saal & Milling, Solicitor-. A. M. Wallace, Solicitor. R. C. Milling, A. M. Wallace, R. E. Milling, Jr., of Counsel.

[fol. 38] *Duly sworn to by J. H. Nattin and J. G. McDade. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 39] IN UNITED STATES DISTRICT COURT

[Title omitted]

Narrative Statement of Evidence

A hearing on the Rule issued to the defendants, to show cause why a preliminary injunction should not issue in the above matter, was had before their Honors, Rufus E. Foster, Circuit Judge, and Ben C. Dawkins and Louis H. Burns, District Judges, on Wednesday, January 19, 1927, in open Court, in the City of New Orleans, Louisiana, and the following testimony was adduced on behalf of the complainant:

A. H. DIEKMAN, being duly sworn, testified by affidavit as follows:

That he is land Appraiser for the St. Louis Southwestern Railway Company, and that at his request, a photostatic copy of a map of Bossier Parish, Louisiana was furnished him by the Deputy Clerk of the Police Jury of said Bossier Parish, Louisiana, and that said map shows the boundaries of Consolidated Road District of Bossier Parish, Louisiana; that all of Bossier Parish, Louisiana is included in said Consolidated Road District except the portion of map colored in red; that he has checked the description of the lands included in Consolidated Road District, and that said map is correct.

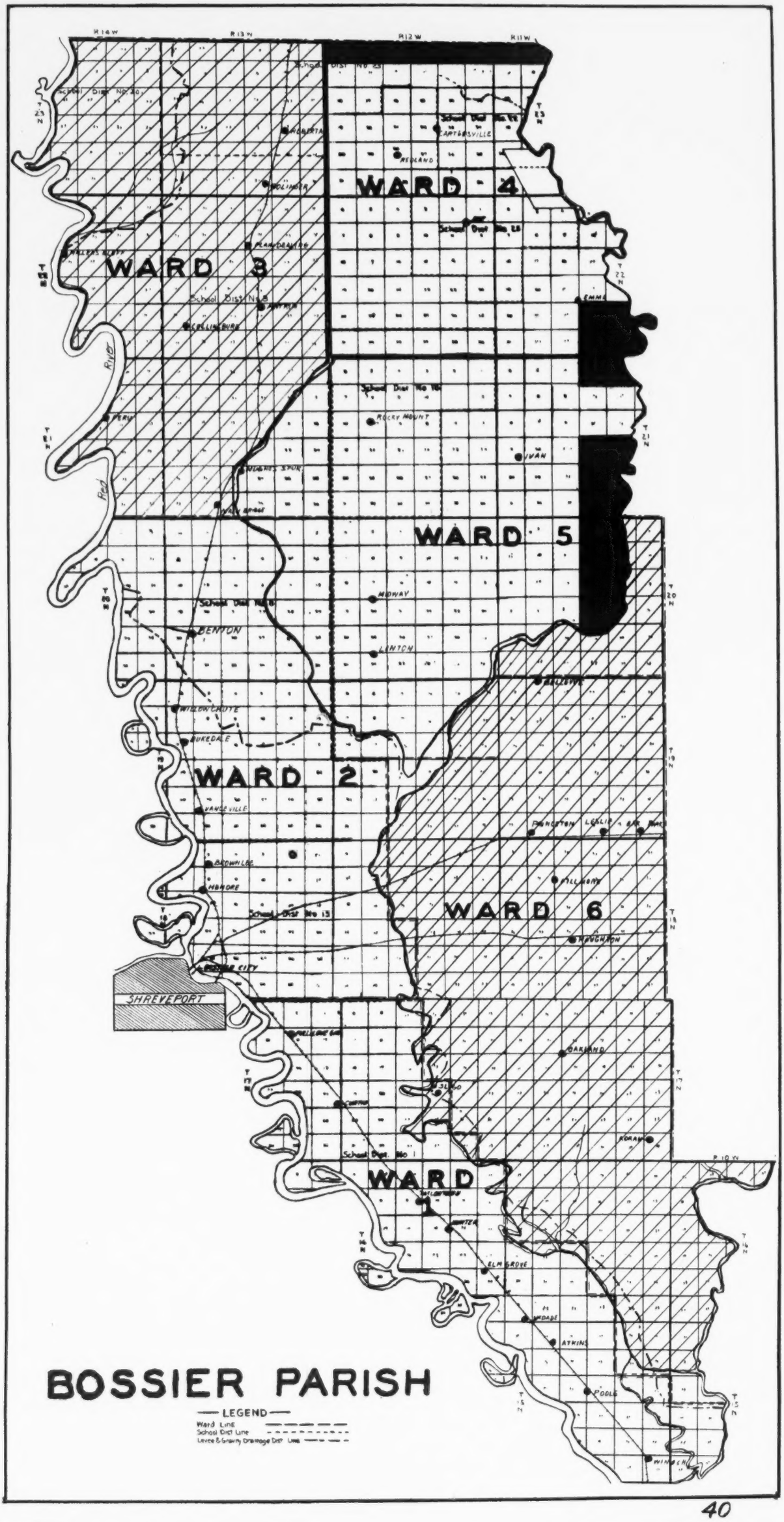
He attaches said map hereto as Exhibit "A" hereof.

(Here follows Exhibit "A", marked side folio page 40)

[fol. 41] A. H. DIEKMAN, being duly sworn, further testifies by affidavit as follows:

That he is a land appraiser for the St. Louis Southwestern Railway Company, and as such is familiar with lands

EXHIBIT "A"


WARD 4
WARD 3
WARD 5
WARD 2
WARD 6
WARD 1
BENTON
SHREVEPORT
BOSSIER PARISH
LEGEND
Ward Line
School Dist Line
Levee & Gravity Drainage Dist Line

along its right-of-way; he has investigated more than 150 sales in Bossier Parish, Louisiana, for the year 1925 taken at random from the Conveyance Records of said parish, particularly Books 78 and 79, which said sales cover lands located in the Consolidated Road District of said parish, and that he has compared the consideration shown in the deeds recorded for the sale of such lands and the assessed valuation for the same lands for the year 1926; that he finds the average valuation for taxation of urban lands included in said sales to be 58-3/10% of the amount for which they were sold and on rural lands said tax value is 40-5/10% of the price for which they sold.

That he also examined at random sales of lands made throughout said parish for the year 1926 and comparing the sales prices for said lands with the assessed value of the same for the year 1226, finds that urban properties are assessed at 54-7/10% of the prices at which they were sold and rural lands are assessed at 39-4/10% of the sale prices for the same.

He further says that he has compared the value of the St. Louis Southwestern Railway Company- lands and the Shreveport Bridge & Terminal Company's lands in the Consolidated Road District of Bossier Parish, Louisiana, as fixed by the Interstate Commerce Commission and upon which value it is taxed, with the value as fixed for taxation purposes of adjoining and adjacent lands; that he finds that the assessed valuation of rural lands is approximately 25% of the assessed value of the Railway's and Bridge [fol. 42] Companies rural lands as fixed by the Interstate Commerce Commission, said lands being similarly situated and of approximately equal value; that as to urban properties the assessment for taxation of adjacent lots is approximately 45-5/10% of the value and assessment of the St. Louis Southwestern Railway Company's lands and those of the Shreveport Bridge & Terminal Company, all of said properties being similarly situated and approximately of equal value.

That he attaches hereto and makes a part hereof, a detailed and itemized schedule or abstract of the said sales and assessments referred to above.

(The said abstract of sales substantiates the testimony of said witness.)

He further states that the valuation of the St. Louis Southwestern Railway's urban and rural properties and those of the Bridge Company, referred to hereinabove, was made by the Interstate Commerce Commission on an appraisal made by its appraiser, E. M. Van Petten, and that said appraiser fixed the valuation of said lands in accordance with the actual market value of adjacent and adjoining properties based on recent sales of such properties.

(P-3.)

B. F. Batts, being duly sworn, testified by affidavit as follows:

That he is Land Attorney for the St. Louis, Southwestern Railway Company; that he attached hereto as Exhibit "A", circular letter furnished him by the Clerk of the Consolidated Road District of Bossier Parish, Louisiana, which letter and statement he is informed and believes was fur-[fol. 43] nished to all of the prospective buyers of bonds of said Consolidated Road District of Bossier Parish, Louisiana, by direction of said road district."

The circular letter and statement attached to the affidavit of B. F. Batts, and marked Exhibit "A", was addressed by R. B. Hill, Clerk of the Police Jury, of Bossier Parish, Louisiana, to all interested bond buyers, under date of February 15, 1926; in which letter it was stated that Bossier Parish would offer for sale bonds of Consolidated Road District of Bossier Parish, Louisiana, in the amount of $1,389,500.00, on March 9, 1926; and in the statement which was sent with the letter, entitled "Statement of Bond Issue, Consolidated Road District of Bossier Parish, Louisiana, the following facts were stated:

Bonds issued by Consolidated Road District of Bossier Parish, Louisiana.

Dated to be sold: March 9, 1926, at ten o'clock a. m., Benton, La. Sealed bids received until ten o'clock a. m., sale day.

Amount of issue: $1,630,000, of which amount $240,500 is to refund outstanding bonds, as follows: Road District No. 1 $157,000; Road District No. 2 $41,000, and Road District No. 3 $42,500.

Amount of issue to be sold: $1,389,500.

Date of Bonds: March 1, 1926, and due one to thirty-nine years, serially.

Purpose of Issue: Highway construction.

Rate of Interest: Five per cent, payable semi-annually, on the 1st day of September and 1st day of March of each [fol. 44] year.

Bonds issued under Article 14, Section 14, Con-titution of the State of Louisiana.

Railroads in District: St. Louis Southwestern, 36.27 miles of main line and 6.56 miles of siding; Louisiana Railway and Navigation Company, 26.16 miles of main line and 6.76 miles of siding; Vicksburg, Shreveport and Pacific, 17.50 miles of main line and 7.21 miles of siding; Louisiana and Arkansas Railway, 17.14 miles of main line and 2.65 miles of siding.

Number of Acres in District: 520,348.

True Valuation (approximate): $25,000,000.

Assessed value for 1925: $17,715,000.

Maturities of Bonds of Road District No. 1 to Be Refunded:

Two bonds during 1926; three bonds during 1927 through 1933; four bonds during 1934 through 1937; five bonds during 1938 through 1940; six bonds during 1941 through 1944; seven bonds during 1945 through 1946; eight bonds during 1947 through 1948; nine bonds 1949 through 1950; ten bonds during 1951 through 1952; eleven bonds during 1953.

Maturities of Bonds of Road District No. 2 to Be Refunded:

Three bonds during 1926 through 1930; four bonds during 1931 through 1940; five bonds during 1941 through 1943; six bonds during 1944 through 1945.

Maturities of bonds of Road District No. 3 to Be Refunded:

Three bonds during 1926 through 1931; four bonds during 1932 through 1941; five bonds during 1942 through [fol. 45] 1944; six bonds during 1945 through 1946.

Said bonds shall mature on the dates and in the amounts and manner as follows:

Bonds numbered 1 through 12, inclusive, aggregating $11,500, maturing March 1, 1927.

* * * * * * *

(P-4.)

W. A. Conaway being duly sworn, testified by affidavit as follows:

"That he is the Tax Agent for the St. Louis Southwestern Railway Lines and for the Shreveport Bridge & Terminal Company; that the basis on which taxes are assessed against the property of said companies in Louisiana is the valuation fixed by the Interstate Commerce Commission, which said Commission is required and attempts to value said properties at their actual cash value based on the actual value of adjacent lands and giving due consideration to recent sales; that as a matter of fact the total valuation of the lands of said corporations in Bossier Parish, Louisiana, as fixed by the Louisiana Tax Commission is slightly in excess of that fixed by the Interstate Commerce Commission, and the valuation of said railroad lands per acre for assessment purposes in the Consolidated Road District of Bossier Parish is from 120 to 300 per cent higher than that of adjacent urban and rural lands similarly situated and of approximately equal value.

He further states that he is informed and believes that other property within the Consolidated Road District of Bossier Parish is assessed on a basis of 40 to 60 per cent of its total worth.

[fol. 46] He further declared that he is the proper official of the said corporations referred to above, to whom all notices affecting assessments, taxes, and the creation of taxing districts should be given, and in fact are referred, that no notice whatever was given to him or to the best of his information and belief to any agent or official of said corporations relative to the creation of the Consolidated Road District of Bossier Parish, or the making of any assessment or levying of any taxes therein, or the issuance of any bonds by said district until affiant inquired of the Tax Collector for Bossier Parish, Louisiana, the amount of taxes due by said corporations for the year 1926, said inquiry being made in the latter part of November and ap-

proximately a month prior to the filing of suit by said corporations against the Tax Collector and against the said Consolidated Road District."

(P-5.)

E. A. Conaway, being duly sworn, further testified by affidavit as follows:

"That he is Tax Agent for the St. Louis Southwestern Railway Company and for the Shreveport Bridge & Terminal Company; that the assessed value of the properties of said companies for the purposes of taxation in Consolidated Road District of Bossier Parish, Louisiana, is as follows:

36.27 miles of main track @ $22,000.00 Mi	$797,940 00
6.56 miles of side track @ 5,000 Mi.	32,800 00
Real Estate outside right-of-way	1,830 00
Rolling Stock	167,870 00
Shreveport Bridge & Terminal Co.	156,070 00
Total	$1,156,510.00

[fol. 47] That he is informed and believes that this valuation as fixed by the Louisiana Railroad Commission is based on the value of the Railway and Bridge Companies' properties as fixed by the Interstate Commerce Commission; that the valuation of said properties so fixed by the Interstate Commerce Commission is as well as he can determine as follows:

St. Louis Southwestern Railway Co. in Bossier Parish

Cost new	Less depreciation	Lands	Net value
$734,595.00	$602,492.00	$136,405.00	$738,897.00

Shreveport Bridge & Terminal Co. in Bossier Parish

$207,175.00	$187,693.00	$417.00	$188,110.00

That the above figures do not include the rolling stock for the reason that he could not apportion the amount of rolling stock of the St. Louis Southwestern Railway Company as

fixed by the Interstate Commerce Commission as used in Bossier Parish, Louisiana, but that his rendition of rolling stock in the entire State of Louisiana for general taxation purposes is $167,870.00."

(P-6.)

J. P. Flournoy, being duly sworn, testified by affidavit as follows:

"That he was born and reared in the Parish of Caddo, in the State of Louisiana, and has been dealing in real estate, either as a real estate agent, Assessor or Sheriff for the past thirty-five years. That he was Assessor of Caddo Parish, which is adjacent to the Parish of Bossier, about four or five years and then was elected Sheriff of [fol. 48] Caddo Parish, which position he held for ten years, and that he is now engaged in the real estate business and is fairly well familiar with the values of property located in the Parish of Bossier, in the State of Louisiana. That in addition to his general knowledge of values in said Parish, brought about by the fact that he has negotiated a number of sales therein, he made a special investigation of the assessment rolls, in a limited way, and of the sales book of said Parish for the purpose of ascertaining, as far as he could, whether the property in said Parish was assessed at its actual cash value or not.

That with this investigation and with his own personal knowledge of the values of a large portion of the property in said Parish, affiant states that in his opinion the property in said Parish is generally assessed for the years 1925, 1926, at from 65 to 75% of its actual cash value.

Illustrating this, among the numerous tracts which affiant investigated was one formerly belonging to the S. S. Hunter Estate, which was sold to W. H. Hodges, as per title in Book 80, page 45, in the year 1925, containing 588 acres, for the sum of Forty Thousand Dollars ($40,000.00), and it is assessed for the year 1926 at the sum of $17,530.00.

Another tract of land sold by Prince et al to W. T. McDade, as per title in Book 79, page 328, in the year 1926, containing 773 acres was sold for the sum of $54,000.00, and its assessment for the year 1926 is $14,180.00.

That J. H. Modewell sold to R. A. Nelson, et al, as per [fol. 49] title in Book 52, page 87 in the year 1919, 227 acres of land, for a sales price of $45,500.00 and the same is assessed at $12,280.00 and in the opinion of affiant said property is worth the sales price today.

That in a number of sales to J. T. Shaw, adjacent to and along the line of railroad of the St. Louis Southwestern Railway Company, he finds that the same cost him on an average of about $110.00 per acre and that its assessment for the year 1926 is on an average of about $50.00 per acre.

That another tract belonging to J. H. Whittington, consisting of 348.74 acres, close to the right of way of the railroad company is assessed at $15,810.00 and in the opinion of affiant said land is worth at least $80.00 per acre and is assessed at $46.00 per acre.

That Mrs. Mary Lee Scoville has 113 acres, a part of the Shady Grove Plantation, right on the right of way of the railroad company, at Vanceville, La., assessed at $4,450.00, which is well worth the sum of $11,300.00.

That without giving all of the sales he investigated, together with the assessment thereof, he reached the conclusion that rural real estate in Bossier Parish and in Consolidated Road District No. 1, was assessed at not more than 65% to 75% of its value."

[fol. 50] (P-6.)

R. W. Reardon, being duly sworn, testified by affidavit as follows:

"That he is Chairman of the Louisiana Tax Commission, created under the Constitution and Laws of the State of Louisiana, with authority and jurisdiction to assess in the State of Louisiana railroads and railroad property;

That in assessing railroads in the State of Louisiana the said Tax Commission, after obtaining all available data, attempts to assess such railway companies on all of their property at the actual cash value of the same, and that this method is and was pursued in the assessment of the St. Louis Southwestern Railway Company for its property in said State."

(P-8.)

W. A. Coxaway, being duly sworn, testified by affidavit as follows:

"That he is Tax Agent for the St. Louis Southwestern Railway Company; that said St. Louis Southwestern Railway Company is an Interstate Carrier operating a railroad through the States of Missouri, Arkansas, Louisiana and Texas, and that a part of said Railway's system consisting of approximately 36.27 miles of trackage runs through the Consolidated Road District of Bossier Parish, Louisiana, from Arkana at the boundary line between Louisiana and the State of Arkansas to Bossier City.

That the principal office of the St. Louis Southwestern Railway Company and the Shreveport Bridge & Terminal Company in Louisiana, and the agent of said companies for [fol. 51] service of legal process are at Benton in Bossier Parish, Louisiana, and in the said Consolidated Road District, and that all of the rolling stock of the said Railroad and of the said Bridge Company in Louisiana is assessed for purposes of taxation in the said Road District.

That the Shreveport Bridge & Terminal Company owns a bridge across Red River at Bossier City, Louisiana in said Consolidated Road District and that the said St. Louis Southwestern Railway Company owns all of the stock of the Shreveport Bridge & Terminal Company and is bound and obligated for the payment of all taxes of whatever nature due by the Shreveport Bridge & Terminal Company.

That affiant is informed and believes and, therefore, avers that the Consolidated Road District of Bossier Parish, Louisiana plans to construct hard surfaced roads in said District, one of which said roads runs parallel with the right-of-way of the St. Louis Southwestern Railway Company from Bossier City, Louisiana, to Arkana, Louisiana, at the boundary line between the States of Louisiana and Arkansas.

That the Tax Collector of Bossier Parish, Louisiana has demanded from the said Railroad Company and the said Bridge Company payment of a seven mills tax for the year 1926 upon the assessed valuation of all property owned by said Companies in the said Consolidated Road District for the payment of interest and the creation of the sinking

fund for the payment of bonds issued by the said Consolidated Road District, the said tax amounting to the sum [fol. 52] of One Thousand Ninety-two Dollars and Forty-Nine Cents ($1,092.49) against the property of the Bridge Company and Seven Thousand Three Dollars and Eight Cents ($7,003.08) against the property of the said Railway Company.

That the said Companies have tendered to J. H. Nattin, Tax Collector for the said Consolidated Road District, all taxes assessed against the property of said Companies located in the said Parish and have offered to pay him all of the said lawful taxes assessed against their respective properties, but he declines and refuses to accept the same unless the said Companies also pay the amount of taxes levied by the said Consolidated Road District as aforesaid and threatens that unless the said Companies pay such Consolidated Road District tax, as aforesaid, to advertise for sale their respective properties located in said District for the payment of said taxes."

(P-9.)

R. H. Laing, being duly sworn, testified by affidavit as follows:

"That he is General Passenger Agent of the St. Louis Southwestern Railway Company, and has been Assistant General Passenger Agent or General Passenger Agent of said St. Louis Southwestern Railway Company for many years; that he has become familiar with the effect of hard surface roads, particularly those which parallel the St. Louis Southwestern Railway Lines at many points in Arkansas and Missouri; that the immediate effect of the building of such roads is to deprive the railroad of practically all of its local passenger business, and to decrease its revenue therefrom, and that he verily believes the build- [fol. 53] ing of the road parallel to the St. Louis Southwestern Railway Company from Bossier City, Louisiana, to Arkana, Louisiana, will deprive the St. Louis Southwestern Railway Company of the major portion of its passenger revenue between such points, and the construction of such roads will not in any way benefit the railroad or increase it value."

(P-10.)

F. W. GREEN, being duly sworn, testified by affidavit as follows:

"I am Vice-President of the St. Louis Southwestern Railway Company, and have been in the railroad business since 1893, about nineteen years of which has been in Arkansas. I was formerly General Manager of the Louisiana & Arkansas Railway and lived at Stamps, Arkansas.

I am familiar with various communities where good roads have been constructed and have seen the benefits which flow from them. Good roads increase the accessibility of land and to that extent add to or enhance the value of that land, the enhancement being proportionate to the productivity and location. Highways do not increase the value of improvements erected on the land for the reason that improvements are perishable and can be replaced in kind at any time. In all cases with which I am familiar, where roads have been constructed parallel to railroads, such construction has resulted in a decrease of the railroad's business, particularly its local traffic, and I verily believe that should such a road be constructed from Bossier City, La., to Ar- [fol. 54] kana, La., as contemplated by Consolidated Road District of Bossier Parish, Louisiana, to connect with roads in Arkansas, it would materially decrease the business of the St. Louis Southwestern Railway Company in Louisiana, and the construction of such roads will not in any way benefit the railroad or increase its value."

(P-11.)

J. D. WATSON, being duly sworn, testified by affidavit as follows:

"That he is the General Traffic Manager of the St. Louis Southwestern Railway Lines; that he is familiar with the traffic conditions both on the St. Louis Southwestern Railway and railroad where hard surface roads have been built paralleling it or such other roads; that the effect of the building of such roads is always to deprive the railroad of the major portion of its local traffic, and that he believes that should a hard surface road be constructed from Bos-

sier City, Louisiana, to Arkana, Louisiana, as contemplated by Consolidated Road District of Bossier Parish, Louisiana, the effect thereof would be to deprive the St. Louis Southwestern Railway Company of a large portion of its local traffic between such points, and the construction of such roads will not in any way benefit the railroad or increase its value."

(P-12.)

F. H. Millard, being duly sworn, testified by affidavit as follows:

"I am Assistant to the President of the St. Louis Southwestern Railway Companies and as such am in charge of [fol. 55] the accounts and statistics of those companies. By profession I am an engineer accountant. I reside at St. Louis, Mo. I have been employed by the St. Louis Southwestern Railway Companies since 1920 and have been their chief accounting officer since 1922. Prior to my employment by these companies I was employed as Assistant to the Director of Traffic of the United States Railroad Administration, in charge of traffic statistics. Prior to that time I was statitician for the Statistical Bureau of all Western Railroads located at Chicago.

An increase in population of the territory served by a railroad, or even an increase in the density of traffic on that railroad, does not mean an increase in net earnings. In the Southwest it has in many cases resulted in a decrease of net revenues. This is true because governmental authorities, state and federal, in fixing the level of rates, deal not with the gross revenues but with the net revenues derived from rates. I have made many statistical analyses of the passenger traffic of the St. Louis Southwestern Railway Companies extending over the period from 1891 down to 1926. Each month it is a part of my duties to analyze the traffic and revenues of the lines, for the purpose of determining any increase or decrease therein and the causes thereof, and for this reason to investigate the particular points and the particular trains on which there has been an increase or decrease. I have found during the past nine years that there has been a constant growing decrease in the passenger traffic and passenger revenues of these com-

panies. In 1926 the total passenger revenue received by [fol. 56] the System was $2,118,000, or but one-half of that received in 1918, which was $4,239,000. From 1918 to 1926 the passenger revenues of the System were as follows:

1918	$4,239,220.68
1919	3,824,338.02
1920	4,031,902.97
1921	3,089,890.93
1922	2,686,793.72
1923	3,390,917.38
1924	2,918,929.44
1925	2,486,944.33
1926	2,118,395.90

An analysis of these decreases shows that they are due entirely to falling-off of local traffic, that is, the short haul traffic between local points and under fifty miles. The investigation shows in each case that the falling-off is due to the use of private automobiles and busses along the improved highways, many hundreds of miles of which have been built along the System's lines in Missouri, Arkansas, Texas and Louisiana.

In addition to the loss of passenger traffic, it has been our invariable experience that when an improved highway, such as those which are to be constructed in this district, is constructed along our railroad, there is a substantial decrease in freight revenue due to the transportation by trucks both privately owned and in carrier service.

The construction of the highways proposed in Consolidated Road District of Bossier Parish will in my opinion [fol. 57] not benefit the System in any sense, but on the contrary will result in a very heavy annual loss in revenues to the System."

(Pltff. 13.)

B. F. Batts, being duly sworn, testified by affidavit, as follows:

"That he is the Land Attorney of the St. Louis Southwestern Railway Company and occupies the same position with the Shreveport Bridge and Terminal Company.

That the said Railway Company owns all of the track of the said Bridge Company and is therefore to all practical purposes owner of its property.

That the said Railway Company by virtue of its contract with said Bridge Company has for over 10 years paid all taxes assessed against said Bridge Company in Louisiana and has by consent been thereby subrogated to all of the rights and obligations of said Bridge Company with reference to said taxes and particularly with reference to such taxes for the year 1926.

That the said Bridge Company has fully authorized and through its officers and directors has directed the said Railway Company to bring suit and stand judgment in its behalf to restrain the Consolidated Road District and the Tax Collector of Bossier Parish, Louisiana, from collecting a seven mill tax against its property and protect and represent any interest whatever it may have in said suit, but that by virtue of said written agreement said Bridge Company has disclaimed any primary interest in the obliga-[fol. 58] tions sought to be imposed by said taxes and has only a secondary residual interest in opposing a collection of same."

W. S. Wilkinson, being duly sworn, testified by affidavit as follows:

"I am a resident of the City of Shreveport, in Caddo Parish, State of Louisiana, and have been a resident of said City for twenty-six (26) years; I am thoroughly acquainted with the roads and highways of Bossier and Caddo Parishes and with the railway lines traversing both of these Parishes. Some of the roads proposed to be improved by the Consolidated Road District of the Parish of Bossier, Louisiana, converge at Bossier City traffic bridge which leads to the City of Shreveport. That from Bossier City and the City of Shreveport various lines of railroad and motor busses operate in competition with the St. Louis and Southwestern Railway Company. That the Louisiana Railway & Navigation Company, the Texas-Pacific Railway Company, the Southern Pacific Railway Company, and the Kansas City Southern Railway Company operate railroad lines out of Shreveport, which

separately, or with their connections, serve points in Northeast and Central Texas which are served by the St. Louis and Southwestern Railway Company. That the Tri-State Transfer Company, the Interstate Motor Bus Corporation, and the Caddo Transfer & Warehouse Company operate motor bus lines out of Shreveport over the improved roads of Caddo Parish, carrying freight and passengers to points in Texas and Arkansas served by the St. Louis and South- [fol. 59] western Railway Company. That the Louisiana & Arkansas Railway Company, the Texas & Pacific Railway Company, the Kansas City Southern Railway Company, and the Transfer and Motor-bus companies referred to above, separately, and in conjunction with their connections at various points, serve points and territory along the line of the St. Louis and Southwestern Railway Company in the southern part of the State of Arkansas."

TESTIMONY FOR THE DEFENDANT

(Deft. 1)

Affidavit of Mr. J. G. McDade and Miss D. W. Brownlee

Mr. J. G. McDADE and Miss D. W. BROWNLEE, both residents of the Parish of Bossier, State of Louisiana, and both of whom are persons of the full age of majority, each of whom, having been first duly sworn, testified by affidavit as follows:

The said J. G. McDade declares that he is President of the Police Jury of the Parish of Bossier, State of Louisiana, and the said Miss D. W. Brownlee declares that she is the Clerk, pro tem, of the Police Jury of the Parish of Bossier, State of Louisiana; that R. B. Hill, the regularly elected Secretary of said Police Jury, is at the present time ill and confined in a hospital, and is unable to make this affidavit.

Both affiants declare that the Police Jury of *of* the Parish [fol. 60] of Bossier is the governing authority of Consolidated Road District of the Parish of Bossier, and that the Police Jury was likewise the governing authority of Road Districts Nos. 1, 2 and 3 of the Parish of Bossier.

Both affiants declare that in the year 1913 there was created by the Police Jury of the Parish of Bossier a certain Road District, known as Road District No. 1, which comprised all of the territory embraced in Wards 1 and 2, and a portion of the territory of Ward 6, designated as Alluvial Lands, and embraced within the boundaries of the Bossier Levee District of the Parish of Bossier, and that said Road District No. 1 did, after being authorized by vote of a majority of the property tax payers in number and amount qualified to vote under the Constitution and Laws of the State of Louisiana, incur a debt and issue negotiable bonds in the sum of One Hundred and Seventy-five Thousand ($175,000.00) Dollars, and did sell said bonds and receive the proceeds thereof, and did use such proceeds in the construction of roads within said Road District No. 1. That the proceedings had by the Police Jury of the Parish of Bossier, as the governing authority of said Road District No. 1, and leading up to the creation of said District and the issuance and sale of said bonds, more fully and at large appears by reference to certified copies of the proceedings of said Police Jury," copy of which was attached to and made a part of this affidavit and marked "Exhibit A."

"That during the year 1915 the Police Jury of the Parish of Bossier did create a certain Road District known [fol. 61] as Road District No. 2, comprising that portion of Ward 6 of the Parish of Bossier, except that portion of said Ward included in Road District No. 1, and did, as the governing authority of said Road District No. 2, after being authorized by vote in number and amount of the majority of the property tax payers qualified to vote under the Constitution and laws of the State of Louisiana, incur a debt in the sum of Fifty Thousand ($50,000) Dollars, and did issue and sell negotiable bonds for said amount representing said indebtedness, the proceeds of which said bonds were used by said Road District No. 2 for the purpose of constructing roads within said Road District No. 2. That the proceedings leading up to the creation of said Road District No. 2 and the issuance and sale of said bonds will more fully and at large appear by reference to a certified copy of the proceedings of said Police Jury which

are hereto attached, made a part hereof, and marked 'Exhibit B."

That during the year 1915 the said Police Jury of the Parish of Bossier did likewise create a certain other Road District in the Parish of Bossier, which was known as Road District No. 3 of the Parish of Bossier, and which comprised all of the lands within the limits of Ward 3 of said Parish, and that the said Police Jury, as the governing authority of said Road District, did, after being authorized by vote of a majority of the property tax payers in number and amount qualified to vote under the Constitution and laws of the State of Louisiana, incur a debt in the sum of [fol. 62] Fifty Thousand ($50,000.00) Dollars, and did issue and sell negotiable bonds to represent said amount, the proceeds of which said bonds were used for the purpose of constructing roads within said Road District No. 3, all of which will more fully and at large appear by reference to a certified copy of the proceedings of said Police Jury, leading up to the creation of said Road District and the issuance and sale of said bonds," which was attached to and made a part of this affidavit and marked "Exhibit C".

"Affiants further declare that in accordance with the Constitution and laws of the State of Louisiana, the said Police Jury of the Parish of Bossier, acting as the governing authority of said Road Districts Nos. 1, 2 and 3, did thereafter, at the time and in the manner provided by law, levy and impose and did assess and collect ad valorem taxes against all of the taxable property in said Districts in order to provide for the payment of the principal and interest of said bonds issued by said three Road Districts, and that said taxes were duly assessed and collected and extended upon the Assessment Rolls by the Assessor of the Parish of Bossier, and duly collected by the Tax Collector of said Parish and the proceeds thereof paid over to the Police Jury of the Parish of Bossier as the governing authority of the said Road Districts Nos. 1, 2 and 3.

Affiants further declare that the railroad and property belonging to the St. Louis and Southwestern Railway Company was and is located in Road Districts Nos. 1 and 3 of the Parish of Bossier, the said railroad being shown be- [fol. 63] tween the points marked "A" and "B" as shown on a certain plat which is hereto attached, made a part hereof, and marked "Exhibit D".

Affiants further declare that certain property belonging to the Shreveport Bridge and Terminal Company is located partly in Road District No. 1 at the point marked "B" on said plat above referred to and marked 'Exhibit D'.

Affiants further declare that in the year 1925 the Police Jury of the Parish of Bossier, availing itself of the power and authority granted it under the Constitution and Laws of the State of Louisiana, did, on September 16, 1925, adopt a certain ordinance declaring that it was its intention to create a consolidated road district to be comprised of the above-mentioned Road Districts Nos. 1, 2 and 3, and certain other lands in the Parish of Bossier, and did order that notice should be published of its intention to meet and consider the creation of said District on October 13th, 1925, all of which will more fully and at large appear by reference to a certified copy of the proceedings of said meeting of September 16, 1925, which is hereto attached, made a part hereof, and marked "Exhibit E".

Affiants further declare that, in accordance with said resolution of said Police Jury, notice of the intention of said Police Jury to create said Consolidated Road District was duly and seasonably published in the "Bossier Banner", the official journal of the Parish of Bossier under date of September 24th, October 1st and 8th, respectively, [fol. 64] all of which will more fully and at large appear by reference to affidavit of the Publisher of said newspaper, together with a copy of said newspaper of said dates, which were attached to and made a part of this affidavit and marked "Exhibit F", "Exhibit F-1", "Exhibit F-2" and "Exhibit F-3", respectively.

"That said Police jury of the Parish of Bossier did, on October 13, 1925, meet, and certain taxpayers having appeared and urged objections to the boundaries of the District as proposed by the Police Jury, and to the amount, it being claimed that more territory should be taken into the District and that the bond issue should be increased in order that certain roads might be paved and certain other lateral roads built, the said Police Jury did enlarge the proposed boundaries of said Consolidated Road District, and increase the bond issue, and did adopt a resolution declaring its intention to create said Road District in accordance with the desires of said taxpayers, and of their intention to meet again on the 10th day of November, 1925, for

the purpose of creating said Road District, and ordering the election, all of which will more fully and at large appear from a certified copy of the proceedings of said Police Jury of date October 13, 1925," which was attached to and made a part of this affidavit and marked "Exhibit G".

"Affiants declare that said notice was duly published in the 'Bossier Banner,' the official journal of the Parish of Bossier, under date of October 22nd, October 29th, and November 5th, 1925, as will appear from an affidavit of [fol. 65] the Publisher of said 'Bossier Banner', together with copies of the newspapers," copies of which were attached to and made a part of this affidavit, and marked "Exhibits H, H-1 and H-2", respectively.

"That the said Police Jury did meet on November 10, 1925, and no objection having been urged to the creation of said Road District (which fact is shown by affidavit of R. B. Hill, Secretary of said Police Jury, which is hereto attached, made a part hereof, and marked "Exhibit I"), the said Police Jury did then adopt an ordinance confirming and ratifying the consolidation of the said Road Districts, and did call a special election to be held in said Consolidated Road District on the 22nd day of December, 1925, and that the said Police Jury did cause to be prepared and published a notice of said election, which said notice was published in the 'Bossier Banner' the official journal of the Parish of Bossier, a newspaper printed and published in said Parish, in the issues of November 19th, 26th, December 3d, 10th, 17th and 25th, 1925, and the minutes of the meeting of November 10, 1925 were published in said official journal in the issues of November 19, 1925, all of which will more fully and at large appear by reference to affidavits of the publisher of said 'Bossier Banner', and copies of said newspapers of date November 19, 1925 and December 17th, 1925, "which were attached to and made a part of this affidavit, and marked "Exhibits J, J-1, J-2 and J-3" respectively.

"Affiants further declare that the said Police Jury of the [fol. 66] Parish of Bossier, acting as the governing authority of said Consolidated Road District, did, on December 29th, 1925, meet and did duly promulgate the returns of said election and declare the said election to have been carried by vote of a majority in number and amount of the

property taxpayers qualified to vote under the Constitution and Laws of the State of Louisiana, as will appear from a certified copy of the proceedings of said Police Jury of said date," which was attached to and made a part of this affidavit and marked "Exhibit K."

"Affiants further declare that a certified copy of the Proces Verbal of said Police Jury promulgating said returns, as shown in said copy of said proceedings hereto attached and marked "Exhibit K", was duly and seasonably recorded with the Recorder of Mortgages of the Parish of Bossier (as will appear from a Certificate hereto attached and marked "Exhibit L") was filed with the Secretary of State of the State of Louisiana, as will appear from a Certificate hereto attached, made a part hereof, and marked 'Exhibit M', and the result of said election was duly and seasonably promulgated by publication in the 'Bossier Banner', official journal of the Parish of Bossier, on December 31st, 1925, as will more fully and at large appear by affidavit of the Publisher, and copies of said newspaper," which were attached to and made a part of this affidavit, and marked "Exhibits X and X-2", respectively.

"Affidavits further declare that said Police Jury did thereafter, on January 12th, 1926, meet, as the governing [fol. 67] authority of said Consolidated Road District, and did incur a debt on behalf of said Consolidated Road District in the sum of One Million Six Hundred and Thirty Thousand ($1,630,000.00) Dollars, and did authorize the issuance of negotiable bonds to represent same, the proceedings of which said meeting were duly published in the official journal of the Parish of Bossier, the 'Bossier Banner', in the issue of said newspaper of date January 21, 1926, as will appear from an affidavit of the Publisher of said 'Bossier Banner' and a copy of the newspaper of said date wherein appears a full and complete copy of all proceedings of said Police Jury", which were attached to and made a part of this affidavit and marked "Exhibit O" and "Exhibit O-1", respectively.

"Affiants further declare that the Liquidation Bonds to cover the bond issues of the original Road Districts Nos. 1, 2 and 3, were placed in the State Treasury, in the manner provided by law, and the Police Jury did thereafter, after advertising notice in the manner required by law, receive

(on March 9th, 1926) sealed bids for the sale of said bonds, and did accept the bids of Caldwell & Company, the Commercial Securities Company, and the Whitney-Central Trust and Savings Bank, and did sell said bonds to said Caldwell & Company, Commercial Securities Company, and Whitney-Central Trust and Savings Bank; said notice of said meeting having been published in the 'Bossier Banner', the official journal of said Parish of Bossier, under date of March 18th, 1926, all of which will more fully and at large appear by reference to affidavit of the Publisher of said [fol. 68] newspaper, and a copy of said newspaper of date March 18th, 1926," which were attached to and made a part of this affidavit, and marked "Exhibit P" and "Exhibit P-1", respectively.

"That said Police Jury did thereafter, at a meeting held on March 27, 1926, confirm said sale and appoint depositories for the funds, as will appear from a copy of the proceedings of said Police Jury of date March 27, 1926," which was attached to this affidavit and made a part thereof, and marked "Exhibit —". "Which said proceedings were duly published in one issue of the 'Bossier Banner', the official journal of said Parish, in the manner required by the laws of the State of Louisiana."

"Affiants further declare that on March 29, 1926, the Clerk of the District Court of the Parish of Bossier issued his Certificate certifying that no proceedings had been instituted attacking the validity of the bonds authorized to be issued and sold, or the taxes to be levied and collected therefor, as appears from a Certificate which is hereto attached, made a part hereof, and marked 'Exhibit R', and the said bonds were duly printed and were duly certified to by the Secretary of State of the State of Louisiana, in the manner provided by law, and delivery of said bonds was made to the purchasers thereof and the said Police Jury of the Parish of Bossier, as the governing authority of said Consolidated Road District, did receive the total purchase price thereof, to-wit, the sum of One Million, Three Hundred Ninety-five Thousand and Ninety-six and 13 100 [fol. 69] ($1,395,096.13) dollars, said delivery of said bonds and the payment of said purchase price having been made on March 31st, 1926.

Affiants further declare that prior to the creation of said District and the calling of said election, the Police Jury

did cause to be prepared a map of said Consolidated Road District, wherein was shown the proposed roads to be constructed in said District, and the amount of money to be expended upon each road, a copy of which map thus prepared is hereto attached, made a part hereof, and marked "Exhibit S." The roads in said Consolidated Road District which were to be paved or hard-surfaced are shown on said map marked in red and green, the total mileage of the proposed system of roads in said District aggregating approximately 130 miles.

Affiants further declare that work on said proposed roads has already begun; that in co-operation with the Highway Commission of the State of Louisiana (assisted by the Federal Government) contracts have been let for the construction of approximately fifty (50) miles of said roads, and that from time to time contracts will be let for the construction of the remaining roads.

Affiants further especially declare that the road running from the Arkansas line at Arkana is a portion of the State Highway System of the State of Louisiana; that this road is being constructed by the Highway Commission of the State of Louisiana, the funds for the construction of [fol. 70] same being provided by Consolidated Road District of the Parish of Bossier, the State Highway Commission of the State of Louisiana, and the Federal Government, and in the construction of said road from said Arkana to Bossier City the said Highway Commission is utilizing, to a large extent, the roads theretofore constructed by Road District Nos. 1 and 3 of the Parish of Bossier.

Affiants further declare that the bonds issued and sold by said Consolidated Road District were dated March 1st, 1926; that said bonds begin to mature on March 1st, 1927, and that the interest on said bonds is payable semi-annually, on March 1st, and September 1st of each year, except the interest for the first year, which is payable March 1st, 1927.

That the taxes of the Parish of Bossier and said Consolidated Road District are assessed for the whole year, the rolls being filed on or about October 1st of each year, and the taxes are collected by the Tax Collector during the months of October, November, December, January and February of each year. That under the Constitution and

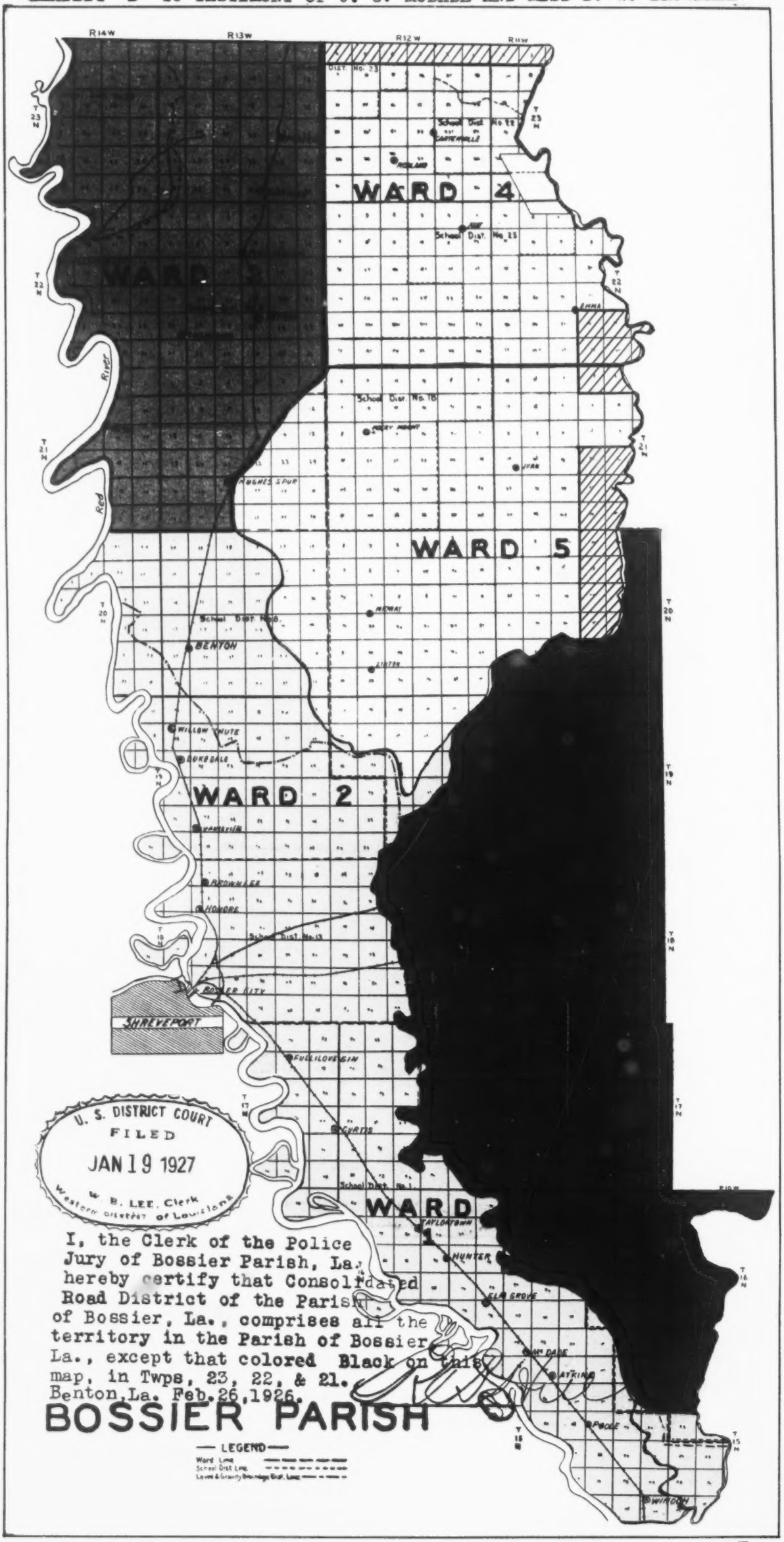
Laws of the State of Louisiana, it is the mandatory duty of the Police Jury of the Parish of Bossier, as the governing authority of said Consolidated Road District, to impose and collect, annually, in excess of all other taxes, a tax sufficient to pay the interest annually, or semi-annually, and the principal, falling due each year, on said bonds issued by said Consolidated Road District of the Parish of Bossier, and especially, in accordance with the provisions of Section 14 of Act 118 of 1921 is it the duty of said Police [fol. 71] Jury "in apt time and manner to levy a tax sufficient to pay the interest upon all of the bonds of each series as it accrues, and to pay the principal as it matûres."

Affiants further declare that in accordance with this mandatory duty imposed upon it under the Constitution and Laws of the State of Louisiana, the Police Jury of the Parish of Bossier, as the governing authority of said Consolidated Road District, did, on August 10, 1926, adopt a certain resolution levying a tax of seven (7) mills on the dollar, the proceeds of which was to be used for the purpose of paying the principal of said bonds maturing March 1st, 1927, and the interest due March 1st and September 1st, 1927, respectively, all of which will more fully and at large appear by a certified copy of said resolution which is hereto attached, made a part hereof, and marked "Exhibit T."

Affiants further declare that said ordinance was duly published in the "Bossier Banner" the official journal of the Parish of Bossier, in six issues of said newspaper, as will apear from affidavit of the Publisher of said newspaper, together with a copy of said newspaper, which are hereto attached, made a part hereof, and marked "Exhibit U" and "Exhibit U-1" respectively.

Affiants further declare that the Police Jury will be required to meet the interest and principal of said bonds of said Consolidated Road District due March 1st and September 1st, 1927, aggregating approximately the sum of [fol. 72] $122,240.00; that the total amount which will be realized from the seven (7) mill tax based upon the assessment in said Consolidated Road District, affiants are informed, will amount to approximately the sum of $125,000.00. That the Board is required to pay its proportion of the cost of assessing and collecting said taxes, based on the

EXHIBIT "D" TO TESTIMONY OF J. G. MCDADE AND MISS D. W. BROWNLEE



U. S. DISTRICT COURT
FILED
JAN 19 1927
W. B. LEE, Clerk
Western District of Louisiana

MAPS

TOO

LARGE

FOR

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cost of collecting all of the taxes of said Parish, and that the net proceeds of said taxes will just about equal the amount required to pay the principal and interest of said bonds for the year 1927, and that if said taxes are not paid said Consolidated Road District will have no funds available to meet the principal and interest requirements of said bond issue for the year 1927.

Said affiant, J. G. McDade, declares that he has been a member of the Police Jury of the Parish of Bossier for the past fifteen (15) years, and that he has been President of said Police Jury for the past three (3) years; and

Said affiant, Miss D. W. Brownlee, declares that while she has been Clerk Pro Tem of the Police Jury of the Parish of Bossier for the past three (3) months, she has been the assistant of Mr. R. B. Hill, the Secretary of said Police Jury of the Parish of Bossier for at least thirteen (13) years, and is familiar with all of the matters and things set forth in the above and foregoing affidavit."

The exhibits referred to in the affidavits of the deponents, J. G. McDade and Miss D. W. Brownlee, and attached to their affidavits, corroborate the facts set forth in the said affidavits.

(Here follow Exhibits D and S, marked side folio pages 73 and 74.)

[fol. 75] (Def't's Ex. 2)

Robert W. Riordan, being duly sworn, testified by affidavit as follows:

1. That he is the Chairman of the Louisiana Tax Commission; that the Louisiana Tax Commission is a constitutional board, created under the Constitution of Louisiana, which Commission supervises the assessments of lands and other property in the State of Louisiana, and which Commission, particularly, fixes the valuation for assessment purposes of railroads and railroad property in the said State; that the rules of the said Commission and the laws of the State require railroads to make a return of the physical value of their property to the said Commission; that

this valuation is reviewed by the said Commission and the valuation for assessment purposes is then fixed.

2. That the St. Louis Southwestern Railroad Company did, in the year 1926, file with the said Louisiana Tax Commission the report required by the laws of the State and the rules of the Commission, wherein it did fix the valuation of its physical property, in the Parishes of Bossier and Caddo, at the sum of $890,396.54.

3. That the said Commission did examine said return and, after due consideration, did fix the value of said property in said two parishes at $1,161,952.00, and did, on June 24th, 1926, certify such valuation and did notify the said St. Louis Southwestern Railroad Company of the fixing of such valuation, and did further notify said company that if there was any objection to the valuation thus fixed, that [fol. 76] it should file a protest on or before Friday, July 9th, 1926, on which day the said Commission would hear such protest. Affiant further declares that the said St. Louis Southwestern Railroad Company made no protest whatsoever to the action of the said Commission, and that the said Commission accordingly fixed such valuation as final and certified same to the Assessors of the Parishes of Bossier and Caddo, with instructions to list in the respective Parishes upon the assessment rolls of the year 1926, the property located in each respective parish at the valuation fixed by the Commission.

4. Affiant further declares that in accordance with the laws of the State of Louisiana, the Assessor of the Parish of Bossier filed with the Louisiana Tax Commission an abstract of his assessment rolls showing the valuation for assessment purposes of all property in the Parish of Bossier, other than public utilities, including the St. Southwestern Railroad Company, which valuations had theretofore been fixed by the said Louisiana Tax Commission; that the Louisiana Tax Commission and the said Assessor did cause to be published in the Official Journal of the Parish of Bossier the notice required by law of the fact that such abstract and valuations had been filed with the said Commission, and the said Commission did give notice, in said published notice, that on August 12th, 1926 it, the said Commission, would hear any and all objections that might be urged to the valuations as fixed by said Assessor,

and that on said August 12th, 1926 the said Commission did [fol. 77] review said rules with the said Assessor, did hear said objections as might have been urged and did finally approve the valuations as corrected for the purposes of the assessment for the year 1926, in and for the Parish of Bossier. The said St. Louis Southwestern Railroad Company did not appear at said hearing held on August 12th, 1926, and did not urge any objections to the valuations as fixed and returned by the said Assessor.

5. Affiant further declares that the Louisiana Tax Commission has heretofore fixed general classifications for farm and other lands in the State of Louisiana; that it has classified farm lands as Classes A, B, and C; that it has classified pasture lands and cut-over swamp lands, and that these classifications and the rules of the said Commission are followed by the Assessors in the State in the valuation of lands for assessment purposes, which rules are applicable all of the State, including the Parish of Bossier.

(Defendant's Ex. 3)

Wm. J. Stelling, being duly sworn, testified by affidavit as follows:

That he is the Assistant Secretary of the Louisiana Tax Commission and that said Commission has jurisdiction over the valuation for assessment purposes of the property of the Shreveport Bridge & Terminal Company, and that he, as Assistant Secretary, has charge of the records of said Louisiana Tax Commission, concerning the fixing of [fol 78] said valuations by the said Louisiana Tax Commission.

Affiant further declares that on August 2nd, 1921, there was published in the Times Picayune, a daily newspaper published in the City of New Orleans, an item to the effect that the Interstate Commerce Commission had fixed the valuation of the property of the Shreveport Bridge & Terminal Company at $450,347.00; that for the year 1921 the Louisiana Tax Commission placed a valuation on the property of said Company at $35,000.00, which valuation was protested by said Company on June 22, 1921, the same Company claiming that an adequate allowance for depreciation had not been made, and requested an allowance of 28%. The Louisiana Tax Commission allowed a depreciа-

tion at the rate of 2% per annum for thirteen (13) years, thereby reducing the value of said property for assessment purposes for the year 1921 from $350,000.00 to $325,000.00, one half of said property being assessed in Bossier Parish and one-half in Caddo Parish. On December 31st, 1925, the said Shreveport Bridge & Terminal Company returned a valuation of $270,723.34 upon its said property. The Commission established a valuation of $312,130.00, said valuation being based upon the valuation established for the year 1921, less depreciation, which valuation was certified to W. A. Conway, Tax Agent, Shreveport Bridge & Terminal Company, under date of June 24, 1926, at which time the Commission fixed July 9th, 1926, as the date to hear protests. No protests were filed and this value was ordered made final by order of the Commission, and the Assessors of the Parishes of Bossier and Caddo were duly notified.

[fol. 79] (Def't- Ex. 4)

J. H. Nattin, being duly sworn, testified by affidavit as follows:

That he is the Sheriff and Ex-Officio Tax Collector for the Parish of Bossier, State of Louisiana, and has been since June, 1924, and that the Shreveport Bridge and Terminal Company paid their taxes for the years 1924 and 1925 by check drawn and signed by the said Shreveport Bridge and Terminal Company and that they offered a check for their taxes for the year 1926 less the taxes for Consolidated Road District and requested that he issue a receipt in full for all taxes due for the year 1926 which he refused to do, and that said check was signed by the Shreveport Bridge and Terminal Company.

(Def't- Ex. 5)

J. H. Nattin, being duly sworn, further testified by affidavit as follows:

That he is the Sheriff and Ex-Officio Tax Collector of the Parish of Bossier and has been for three years; that he

is now collecting taxes in the Parish of Bossier, based upon the assessment roll for the year 1926, which was filed with him as tax collector by the Assessor, Mr. E. D. Taylor; that the property belonging to the St. Louis Southwestern Railroad Company is valued upon said Roll at the sum of $1,440,000.00 and that the property of the Shreveport Bridge & Terminal Company is valued on said Roll at [fol. 80] $156,070.00; that these valuations and assesments are the valuations and assessments based upon which all state, parish and local taxes are paid, including the taxes levied, assessed and ordered collected by the Consolidated Road District of the Parish of Bossier, and that no distinction is made between the assessment for state and parish purposes and the assessment for said Consolidated Road District; that said St. Louis Southwestern Railroad Company and said Shreveport Bridge & Terminal Company have offered to pay all taxes levied and imposed for all purposes other than the tax levied and imposed by the Consolidated Road District of the Parish of Bossier, and that affiant refused to accept payment thereof, as he would not issue a full receipt unless and until all taxes levied and assessed, including the tax levied and assessed by the Consolidated Road District of the Parish of Bossier, had been paid.

Affiant further declares that as Sheriff and Ex-Officio Tax Collector of the Parish of Bossier, prior to 1926, the St. Louis Southwestern Railroad Company and the Shreveport Bridge & Terminal Company paid, without protest, all taxes levied, assessed and collected by Road Districts 1 and 3 of the Parish of Bossier, the assessments, based upon which said taxes were paid, being identical in form with the assessment for the year 1926; the assessment on which such road taxes were paid being the general assessment of said property and based upon which all state and other taxes were paid by said Companies.

Affiant further declares that there are always adjustments and cancellations in the assessments of the Parish [fol. 81] of Bossier, and certain other items not collectible; that the Consolidated Road District of the Parish of Bossier is required to bear its proporation of the expenses of collecting all taxes and that, in addition, it pays its pro-

portion of the expense of assessing these taxes, and while the total taxes levied and assessed by said District, according to the Assessment Roll, amounts to the sum of $125,825.27, affiant verily believes that the net amount payable to said District, after all adjustments and deductions are made, will hardly equal $122,000.00.

(Def't's Ex. 6)

V. V. Whittington, being duly sworn, testified by affidavit as follows:

That he is the Treasurer of the Parish of Bossier and has been for seven years and that as Treasurer of the Parish of Bossier he is Treasurer of the Consolidated Road District of the Parish of Bossier; that the total principal and interest requirements to be met by the Consolidated Road District of the Parish of Bossier during the year 1927, that is, the principal and interest of the bonds due on March 1st, 1927, and the interest due on September 1st, 1927, including the principal and interest on the bonds issued and sold by Road Districts 1, 2 and 3, will aggregate $122,807.50; that the total taxes levied and assessed against the property in said District to pay such principal and interest of said bonds, according to the assessment rolls, equal $125,825.27 and that, allowing for the deductions and [fol. 82] the expense of collecting said taxes, in his opinion the net amount realized from the imposition of said taxes for the year 1926 will hardly equal $122,000.00. That excluding the proceeds from the taxes levied and imposed for the year 1926, the Board has no funds available to meet the payment of principal and interest for the year 1927, other than $5,585.00, which represents the accrued interest and the premium received at the time of the sale of the bonds issued and sold by the Consolidated Road District of the Parish of Bossier.

(Def't's Ex. 7)

Mr. J. G. McDade and Miss D. W. Brownlee, being each duly sworn, testified by affidavit as follows:

The said J. G. McDade declares that he is the President of the Police Jury of the Parish of Bossier, State of Louisiana, and the said Miss D. W. Brownlee declares that she is the Clerk, pro tem, of the Police Jury of the Parish of Bossier, State of Louisiana; that R. B. Hill, the regularly elected Secretary of the said Police Jury is at the present time ill and confined in a hospital, and is unable to make this affidavit.

Both affiants declare that the Police Jury of the Parish of Bossier is the governing authority of Consolidated Road District of the Parish of Bossier, State of Louisiana.

Both affiants declare that the said Police Jury of the Parish of Bossier, State of Louisiana, did meet on Septem-[fol. 83] ber 14th, 1926, and having given due and public notice of said meeting by publication in the official journal of the Parish of Bossier, to-wit: "Bossier Banner" as required by law, and that at said meeting all complaints were received and heard and passed upon, and that neither the said St. Louis Southwestern Railway Company or the Shreveport Bridge & Terminal Company filed any protest or complaint at said meeting, all of which is more fully shown by reference to certified copies of the proceedings of said Police Jury held on said date which are hereto attached, and made part hereof, and marked "Exhibit A."

The exhibit "A" attached to the affidavit of J. G. McDade and Miss D. W. Brownlee corroborates the facts sworn to by these witnesses.

(D-8)

E. D. Taylor, being duly sworn, testified by affidavit as follows:

That he is the regularly elected and qualified Assessor of the Parish of Bossier; that as Assessor of said Parish it is his duty to prepare the assessment rolls of said Parish; that he is familiar with the boundaries of the Consolidated

Road District of the Parish of Bossier and that as Assessor of said Parish it is his duty to prepare the assessment rolls for said Consolidated Road District; based upon which the taxes are levied and imposed and are assessed and collected by the governing authority of said Road District. That the roll prepared by him for this purpose is not a special assessment roll, but is the general assessment roll [fol. 84] based upon which all ad valorem taxes are levied, assessed and collected for the Parish of Bossier, State of Louisiana, and the various other political subdivisions in the Parish of Bossier. That he, as Assessor, finally fixes the valuation of all property in said Parish of Bossier and in said Consolidated Road District, other than the public utilities located therein, which public utilities are solely under the jurisdiction of the Louisiana Tax Commission, and the values of such public utilities for assessment purposes are fixed by the Louisiana Tax Commission and are certified to him, as Assessor, by said Commission, such values to be placed upon the rolls prepared by him as Assessor; that in fixing the valuation of other property, he follows the rules and regulations laid down by the Louisiana Tax Commission, which rules and regulations are fully set forth in a report of the Louisiana Tax Commission for the year 1925, at pages 34 to 55 inclusive, and which rules and regulations were followed in making the assessment roll for the year 1926; that the tax payers of said Parish are permitted, under the law, to file a return on or before April 1st, of each year, listing their property and fixing the valuation thereof, and that he, as Assessor, then either approves or increases the value thus fixed by the tax payers and on and after the first of April makes up a list of all property subject to taxation in the said Parish, and that he followed this procedure in making the assessment rolls for the year 1926. That he, after completing the preparation of the list of all property assessable in said Parish of Bossier for the [fol. 85] year 1926, did notify the Parish Board of Equalization, and did publish a notice in the "Bossier Banner," the official journal of the Parish of Bossier, advising all tax payers that said lists were completed and that his lists were open for inspection and that the public Board of Equalization would meet for the period of twenty days subse-

quent to such notice to consider the equalization of all assessments in said Parish; that said Board did meet for a period of twenty days and that he, as Assessor, sat with said Board and that the said Board and he, as Assessor, did consider all of said lists thus prepared by him and did equalize the assessments of said Parish; that after the hearing before the Parish Board of Equalization had been completed, he did file said list with all other papers and documents having reference to the assessment for the year 1926 with the Louisiana Tax Commission, and that he and the Louisiana Tax Commission did then publish notice in the official journal of the Parish of Bossier, to-wit, the "Bossier Banner," and did post notices in other public places in said Parish for the time and manner provided by law, that the Louisiana Tax Commission would hear any and all complaints at its review of said assessments, which hearing was to be had at the City of Baton Rouge on August 12th, 1926.

That on August 12th, 1926 said affiant met the Louisiana Tax Commission and the Rolls were reviewed by the said Tax Commission and said affiant, and objections, if any, were heard and disposed of, and the Rolls were approved [fol. 86] by the Louisiana Tax Commission, and affiant was ordered and instructed to proceed to prepare such rolls.

That affiant then did return to the Parish of Bossier and advise the Police Jury of said Parish that his rolls were ready for inspection and the police Jury did then give notice in the time and manner required by law that it would meet as a Board of Reviewers on September 14th, 1926, for the purpose of considering any objections that might be urged to valuations as fixed for assessment purposes for the year 1926, and that, on said date, the Police Jury of the Parish of Bossier did approve said Rolls, after a public hearing.

Affiant shows that at the hearing before the Police Jury of the Parish of Bossier, the St. Louis & Southwestern Railway Company had the right, under the law, to appear and urge any objections to the valuations as fixed by the Louisiana Tax Commission for assessment purposes, and that the said Company did not appear before the Police Jury and urged no objection to the valuations as fixed by the Louisiana Tax Commission.

That subsequent to the hearing before the Police Jury, affiant filed with the Clerk of Court of the Parish of Bossier, on October 6, 1926, Assessment Rolls for the year 1926. Copy of said Rolls was filed with the Sheriff and Ex-Officio Tax Collector, and also with the Auditor of Public Accounts of the State of Louisiana.

Affiant further shows that in assessing taxable property in the Parish of Bossier for the year 1926, affiant followed [fol. 87] and was guided by the laws of the State of Louisiana, and particularly the rules and regulations of the Louisiana Tax Commission, which rules and regulations are specifically shown in said report of the Commission for the year 1925, as above set forth.

That said affiant did not value all lands in the Parish at a fixed valuation per acre, but that the valuations of the lands varied in accordance with the location and the character of the lands—farm lands being valued according to the classifications as fixed by the Commission, and town property being valued usually at a higher rate, and suburban property being valued at a different rate; that these valuations were made in good faith and with a view of fixing the cash valuation of the property as provided by the Constitution and laws of the State of Louisiana, and with the idea of equalizing the valuation of all classes of property according to the class, and that affiant declares that said valuations were arrived at only after investigation and that said valuations were based on information as to values, which affiant was able and did secure prior to the final filing of the Roll.

Affiant further declares that in the year 1923, the Police Jury of the Parish of Bossier employed Stoner, Gallagher & Gross, Inc., expert land valuers, to value and appraise for assessment purposes all of the lands in the Parish of Bossier, except public service corporations; that said Stoner, Gallagher & Gross, Inc., spent two years on this work at an expense to the Parish of Bossier aggregating [fol. 88] $25,000.00; that the valuations fixed by these experts were accepted by affiant, as assessor, the Police Jury of the Parish of Bossier and the local Board of Equalization.

That the assessments of 1924 were based upon the report made by these experts and that the assessments of 1925 and

1926 were likewise based upon this report, making allowances for any increase or decrease in valuations that had occurred during the period subsequent to 1924.

Affiant now shows that the St. Louis Southwestern Railway Company owns one (1) lot in Bossier City and a tract of land containing 4.66 acres in said Bossier City, which affiant is required to assess under the law, and that said property is assessed on exactly the same basis as other adjacent property is assessed in said City.

Affiant further declares that he has been Assessor of the Parish of Bossier for seven years and that during said years he, as Assessor, has assessed taxes against the lands located in Road Districts 1, 2 and 3 of said Parish, including the taxes against the property belonging to the St. Louis Southwestern Railway Company, and the Shreveport Bridge & Terminal Company, and that said assessment was never questioned by the said Railroad Company, and the taxes thereon were paid.

Affiant further declares that the assessment for the year 1926 of the property of St. Louis Southwestern Railway Company and the Shreveport Bridge & Terminal Company, [fol. 89] against which the tax of seven mills on the dollar has been extended on the rolls, is the same assessment against which all state, parish and other taxes have been extended upon the rolls.

Affiant further declares that he attaches hereto and marks "Exhibits A, B and C", copies of the assessment rolls, showing the assessments of the property of the St. Louis & Southwestern Railway Company, and that the property of the Shreveport Bridge & Terminal Company is likewise assessed, as per copy attached marked Exhibit "D", the said Exhibit "A" being copy of the instructions received by him from the Louisiana Tax Commission concerning the assessment of the St. Louis & Southwestern Railway Company's property.

The Complainant made timely objection to the conclusions of law made in the affidavit of E. D. Taylor, and the testimony was admitted subject to the objection.

Exhibits B and C attached to the affidavit of E. D. Taylor, show the following described property assessed to the St. Louis Southwestern Railway Company:

[fol. 90] EXHIBIT TO TESTIMONY OF E. D. TAYLOR

Description of property		Actual value of al lands, lots or parcels of land, and all improvements thereon as fixed by the La. Tax Commission for all assessment purposes	Road district No. 1, 2½	Cons. road district No. 7, tax
4.06 A. E. of gravel road, W. of Cotton Belt Main Line, in S. E. ¼ Sec. 20 T. 18, R. 13, Lot 1 Blk. of S. E. ¼ & N. E. ¼ of S. E. ¼ 5, McCormick Annex, Subur. 4 A. 1670, 1 lot 200.				
17.74 Mi. Main Line @ $22,000	$390,280.00			
4.34 Mi. Side & Spur @ 5,000	21,700.00			
Real Estate	1,620.00			
Rolling Stock	167,870.00			
Lot	200.00			
	$581,680.00	$81,680	1,454.20	4,071.76

Description of property			Consol. road district tax 7 mills tax	Road district No. 3 3½ mills
18.53 Mi. Main Line @ $22,000	$407,920			
2.22 Mi. Side Track @ 5,000	11,100			
	$418,760	418,760	2,931.32	1,465.66

[fol. 91] Exhibit "D" attached to said affidavit of E. D. Taylor, shows the assessment of the Shreveport Bridge & Terminal Company of property described as ½ of the Bridge across Red River, at an assessed valuation of $156,070.00.

Exhibit No. 9, filed by the defendants, is the Ninth Annual Report of the Louisiana Tax Commission for the year 1925, and is a bound volume, a copy of which will be filed with the transcript in this case, but not incorporated therein.

Complainant made timely objection to the statements of law made in the Report of the Louisiana Tax Commission, for the reason that the laws themselves will best show what their provisions are.

(Deft. Ex. 10)

James M. Henderson, Clerk of Court and Ex-Officio Recorder for Bossier Parish, Louisiana, being duly sworn, testified by affidavit as follows:

That he is the Clerk of Court and Ex-Officio Recorder of the Parish of Bossier, State of Louisiana, and has been for more than twelve years, and that E. D. Taylor is the duly qualified Assessor for the Parish of Bossier, State of Louisiana, and that the said E. D. Taylor, Assessor for said Parish, filed in the Clerk of Court and Recorder's Office his assessment rolls for the year 1926 on the 6th day of October [fol. 92] 1926, and that your affiant issued his certificate that the same had been filed on that date on the 6th day of October, 1926.

(Deft. Ex. 11)

J. G. McDade, E. D. Taylor, J. H. Nattin, V. V. Whittington, being each duly sworn, testified by affidavit as follows:

Said affiant J. G. McDade declared that he is President of the Police Jury of the Parish of Bossier, State of Louisiana, and that he has been a resident of the Parish of Bossier for at least sixty (60) years;

Said affiant E. D. Taylor declared that he is the Assessor of the Parish of Bossier and that he has resided in said Parish at least thirty-four (34) years;

Said affiant J. H. Nattin declared that he is the Sheriff and Ex-Officio Tax Collector of the Parish of Bossier and that he has resided in said Parish for the past fifty (50) years; and

Said affiant V. V. Whittington declared that he is Parish Treasurer of the Parish of Bossier, and that he has resided in said Parish over thirty (30) years; and

That they are familiar with the conditions existing in [fol. 93] the said Parish of Bossier.

Affiants declare that the map attached to the affidavits of Mr. J. G. McDade and Miss D. W. Brownlee, and marked "Exhibit S," correctly delineates the Consolidated Road District of the Parish of Bossier, and that the railroad of

the St. Louis and Southwestern Railroad Company, as shown on said map, running from Bossier City through Benton, Hughes Spur and Plain Dealing up to the Arkansas State Line at Arkana, is correctly located on said map.

Affiants declare that the Western Section of said territory lying north of Bossier City, through which said railroad has been constructed, is alluvial land formed by the Red River. That the eastern section of said territory is comprised partly of alluvial lands and partly of hill lands; that some years ago Road District No. 1 of the Parish of Bossier constructed a road from Bossier City to a point one (1) mile west of Benton, which is shown by a red line on said map from Bossier City to Benton and one (1) mile west thereof, and that this road was hard-surfaced. That there have not been constructed any hard-surfaced roads in the said Consolidated Road District of the Parish of Bossier north of Benton, and that as a result of this condition the land owners and residents of said District residing on the eastern and western sides thereof have not been able to readily reach the St. Louis and Southwestern Railway Company's railroad for the purpose of transporting either their persons or their products over said railroad.

Affiants declare that as a matter of fact the residents [fol. 94] of the north western portion of said District have been transporting their products across the Red River, paying ferriage therefor, so as to reach the hard-surfaced roads in the Parish of Caddo, and to reach the City of Shreveport, which is the largest city in that territory and the main trade center of North Louisiana, and that they have been shipping their goods over the railroad belonging to the Texas & Pacific Railway Company, which runs through the Parish of Caddo from the Arkansas line to the City of Shreveport, and which is a railroad line competing with the said St. Louis and Southwestern Railway Company.

Affiants further declare that the property owners in the Northeastern and Eastern portions of said Consolidated Road District, north of Bossier City, have not availed themselves of the use of said railroad belonging to said St. Louis and Southwestern Railroad Company, but on the contrary

have transported their products across Bodcaw Bayou into Webster Parish, and into the town of Minden, and have patronized the railroad line owned by the Louisiana & Arkansas Railroad Company which traverses the Parish of Webster, which railroad runs from the Arkansas line through the Western portion of Webster Parish to Minden, and from Minden to the City of Shreveport, which railroad is a competitor of the St. Louis and Southwestern Railway Company.

That the Road Districts in the lower portion of said Parish had constructed hard-surfaced roads, and that one of the principal objections of the Consolidated Road Dis- [fol. 95] trict, and the creation of the said Consolidated Road District, was to construct roads in the northern portion of the said Consolidated Road District of the Parish of Bossier, running north from Benton to the Arkansas line, and East and West from Benton, Hughes Spur, and Plain Dealing, in order that the people residing in the Northeastern and Northwestern portions of said District might reach the principal trading points in said District, namely, Plain Dealing, Hughes Spur and Benton, and might be able to reach the only railroad running through the northern portion of said District, to-wit, the St. Louis and Southwestern Railway Company, and thereby transact their business in the said Consolidated Road District of the Parish of Bossier, and reach the City of Shreveport through the said Consolidated Road District over the railroad traversing said District and running from the Arkansas line to Bossier City.

That all of said affiants are public officials; that they were interested in the formation of said Consolidated Road District, and participated therein, and consulted with the Police Jury and the taxpayers in the formation of said Road District and in carrying out the plan for the construction of hard-surfaced roads in said District.

Affiants further declare that in the formation of said Consolidated Road District, and the location of said Roads, the Police Jury of the Parish of Bossier had in mind the creation of a District which would benefit all of the taxpayers equally, and would benefit the whole of said District, [fol. 96] and build up and improve the value of all of the property in said District. Affiants declare that in truth

and in fact in the Northern portion of the District, through which runs the railroad line belonging to the St. Louis and Southwestern Railway Company, a greater mileage of roads will be built and more money, in proportion of the assessed valuation, will be spent than in the remainder of said District.

Affiants declare that this plan was adopted prior to the creation of the District and the voting of the tax, and that all taxpayers knew of the plan to be followed in the construction of said roads.

Affiants further declare that they are firmly of the opinion and belief that one of the prime beneficiaries of the construction of said road system will be the St. Louis and Southwestern Railway Company; that the construction of said roads will bring to the said St. Louis and Southwestern Railway Company freight that heretofore has been transported over other railroads, in other Parishes, to-wit, the Louisiana & Arkansas Railroad, in the Parish of Webster, and the Texas & Pacific Railroad, in the Parish of Caddo; and that said St. Louis and Southwestern Railway Company will be further benefited in that said road will transport the bulk of the material and gravel to be used in the construction of said roads north of Bossier City.

And said affiants further declare that said plan will of necessity build up and improve the towns of Bossier City, Benton, Hughes Spur and Plain Dealing, which are the [fol. 97] principal shipping points on the said St. Louis and Southwestern Railroad in the Parish of Bossier, north of Bossier City.

(Deft. Ex. 12)

Edward Jones, being duly sworn, testified by affidavit as follows:

That he is employed by Whitney-Central Trust and Savings Bank of the City of New Orleans; that he buys municipal bonds for said bank; that he has been engaged in this business for about ten (10) years; that at the request of the Attorneys for the defendants in the suit of St. Louis & Southwestern Railway Company, complainant, versus J. H. Nattin, Tax Collector and Consolidated Road District

of the Parish of Bossier, Louisiana, he has examined the transcript of the proceedings covering the issues of bonds by Road Districts Nos. 1, 2 and 3, and Consolidated Road District of the Parish of Bossier, which transcript is attached to the affidavits of Mr. J. G. McDade and Miss D. W. Brownlee and is designated as "Exhibit 1" of the exhibits filed by the defendants in said cause, and that from his examination of such transcript he has found that the total amount required to pay the principal and interest maturing in 1927 upon the bonds of Road Districts Nos. 1, 2 and 3, and Consolidated Road District of the Parish of Bossier, is one hundred twenty-two thousand eight hundred seven and 50/100 ($122,807.50) dollars, an itemized statement showing the amount of principal and interest thus due being as follows:

[fol. 98] Road District No. 1

$3,000.00—Mature September 1, 1927 (Principal)	$3,000 00
Interest, 5%, March 1, 1927 and September 1, 1927	$7,750 00

Road District No. 2

$1,500.00—Mature September 1st, 1927 (Principal)	$1,500 00
Interest 5%, due March 1st, and September 1, 1927 on $39,500.00 outstanding	$1,975 00

Road District No. 3

$1,500.00—Mature September 1, 1927 (Principal)	$1,500 00
Interest 5% on $41,000.00 due March 1st, and September 1st, 1927	$2,050 00

Consolidated Road District of the Paris of Bossier

Maturities $1,389,500.00 issue (Principal)	$11,500 00
Interest at 4½% from March 1st, 1926 to March 1st, 1927, on $1,389,500.00	$62,527 50
Semi-annual Interest due September 1, 1927 on $1,278,500.00, at 4½%	$31,005 00
Total	$122,807 50

[fol. 99] Defendant then offered in evidence Exhibit No. 13, being a telegram from J. W. Bolton to Congressman James B. Aswell, under date of January 14, 1927; and Exhibit No. 14, purporting to be a reply from James B. Aswell to J. W. Bolton at Alexandria, Louisiana. The last two offerings of defendant being objected to by the complainant for the reason that they had not been sworn to.

These telegrams are reproduced in full, as follows:

(Defendant's Ex. 13)

Alexandria, La., Jan. 14, 1927.

Congressman James B. Aswell, Washington, D. C.:

Must learn immediately valuation of property St. Louis Southwestern Railroad as last determined by Interstate Commerce Commission in Louisiana and amount of same in Bossier Parish, if possible stop If above cannot be readily obtained then send valuation their branch line Lewiston Arkansas to Shreveport stop Also want present status this matter and railroads attitude to situation at present stop Need this data for important litigation coming up at once and ask you wire me collect to Alexandria Saturday all information you can obtain on above matter.

J. W Bolton.

[fol. 100] (Defendant's Exhibit 14)

150 NS BN 111 650VT. 1 67.
B Washington DC 220 P Jan 15, 1927.

J. W. Bolton, Alexandria, La.:

Interstate Commerce Commission advises St Louis Southwestern Railroad property in Louisiana present value of lands used for common carrier purposes is two hundred seventeen thousand six hundred forty two dollars In Bossier parish present value of lands used for common carrier purposes is thirty seven thousand six hundred sixty seven dollars structures cost of reproduction new is one million forty two thousand nine hundred forty five cost of reproduction less depreciation is eight hundred seventy thousand nine hundred six date of appraisal is June thirty nine-

teen hundred fifteen carriers protest commission's valuation reproduction cost and land values are tentative and subject to change upon hearing stop mailing you official statement from commission Monday

J. B. ASWELL. 3:27 P.

[fol. 101] In United States District Court

Agreement on Narrative Evidence—Filed May 16, 1927

Milling, Godchaux, Saal & Milling, Attorneys at Law, Whitney-Central Building, New Orleans

Robert E. Milling, Emile Godchaux, Irving R. Saal, Roberts C. Milling, Raymond H. Saal, Robert E. Milling, Jr., Eugene D. Saunders, Leon H. Rittenberg, Joseph S. Querriero, Wilbur W. Heard.

Cable Fosmigos. Legal Telegraphic Code

File 9081

May 10, 1927.

Mr. W. S. Wilkinson, c/o Wilkinson, Lewis & Wilkinson, Slattery Building, Shreveport, Louisiana.

Dear Sir: Confirming our telephone conversation of today, I have examined the narrative statement of the evidence submitted in the matter of St. Louis & Southwestern Railway Co., v. Nattin, et al, and I feel that you have covered the essential features. As you point out in your letter to me, the only things not covered are the exhibits attached to the affidavits of McDade and Miss Brownlee, but the affidavit itself states the essential facts and I do not see any necessity of burdening the record with a statement of the contents of those exhibits.

As I stated to you over the 'phone, should it develop that any particular fact, not covered in the narrative statement and included in these exhibits, is required, then we will resort to the original transcript.

Thanking you for your courtesy in this matter, I am

Very truly yours, R. C. Milling.

RCM:ME.

[File endorsement omitted.]

[fol. 102] IN UNITED STATES DISTRICT COURT

[Title omitted]

OPINION — Filed March 15, 1927

DAWKINS, J.:

Complainant, a Missouri corporation, brought this suit to enjoin the collection by the sheriff and ex-officio tax collector of Bossier Parish, Louisiana, of a tax levied by the police jury of said parish, for the payment of principal and interest on certain bonds issued by a consolidated road district therein. The grounds for injunction are that the territory within said district "includes practically all of the territory within the parish of Bossier * * *", and while small portions of the parish were omitted, this was done as a "pretense and sham * * * for the purpose of evading Art. 14, Sec. 14, of the Constitution of Louisiana, [fol. 103] which prohibits the creation of a road district which shall comprise the whole territory of the parish;" that the said ordinance levying the tax imposes seven mills on the property of complainant for the year 1926, which is two mills more than is necessary for the payment of the principal and interest of said bonds falling due in that year, and complainant is informed and avers that said two mills is for the purpose of paying the amounts becoming due in 1927, all in violation of Act No. 118 of 1921 and the Constitution of the state which limits the amount to be collected to a sum sufficient to discharge the obligations maturing in the year in which the tax is levied; that the market value of its property will not be increased and that it will derive no benefits from said tax or the construction of said roads, but on the contrary, will actually be injured because one of the principal roads to be constructed will parallel its railroad from the Arkansas State line to Bossier City, and it will have the competition of bus and truck lines thereon, which will take from complainant much of its passenger and freight traffic between said points, thus taking its property without due process and denying it equal protection under the law, contrary to the fourteenth amendment to the Federal Constitution; that it will be discriminated against for the reason that its property is assessed" at its practical cash value, whereas the farm

lands and other property in said district are assessed at a much lower rate, also in violation of Section 1, Art. 14 of the Constitution of the United States; that the portion of its line within the Parish of Bossier forms a part of an interstate railroad and said assessment levies an unjust burden [fol. 104] upon interstate commerce, in violation of Sec. 6, Art. 1 of said Constitution; and that the Act of the Legislature, (No. 118 of 1921) authorizing the creation of said road district, makes no provision for a hearing at any time or place by any tax payer as to the validity or amount of taxes to be assessed against property located within said road district or of the benefits to accrue thereunder, likewise in violation of the Fourteenth Amendment to the Federal Constitution.

Complainant also sues on behalf of the Shreveport Bridge & Terminal Company, a Louisiana corporation, which is assessed with the tax, upon the allegation that it owns all of the capital stock of said Bridge Company "and to all intents and purposes is the owner of said Shreveport Bridge & Terminal Company", and has a contract with said Bridge Company "under which and by which it contracts and agrees to pay all deficits which may occur in the operation of said * * * Company, a copy of which contract is attached hereto and made a part hereof".

A rule nisi was issued and the matter heard before this court at New Orleans, Louisiana, on the — day of January, 1927. At the hearing respondent appeared and filed, first, a motion to dismiss, and secondly, an answer to the rule. In the motion to dismiss it was averred that the petition on its face disclosed that no demand had been made upon the Shreveport Bridge & Terminal Company to institute the complaint as required by equity rule No. 27, and in the alternative, if it should be held that complainant has an interest in the property of said company sufficient to institute [fol. 105] this proceeding said Bridge Company is necessary party and this court should order that it be joined herein; second, that the allegations of said complaint are too vague and indefinite to require respondent to answer; and third, that the complaint does not disclose a ground for equitable relief.

Subject to the motion to dismiss, respondent answered, alleging that the complainant has no right of action under the laws of the state, (a) for the reason that if such right

had ever existed, which was denied, same had prescribed and perempted; (b) that the said tax was levied and imposed for the sole and only purpose of paying the principal and interest of a bond issue of $1,600,000.00 by the Police Jury of said parish as the governing authority of said road district, pursuant to the Constitution and laws of the state of Louisiana, after due notice and publication thereof for a period of thirty days, and approval by a majority vote of the qualified tax payers of said district, the result of which was duly promulgated; that more than sixty days elapsed from the promulgation of the result of said election wtihout any attack being made thereon and the said bonds had been on March 9, 1926, acquired by the Commercial Securities Company, Caldwell & Company and the Whitney Central Trust & Savings Bank; that the said bonds contained the recital that all the provisions of law had been complied with as required by Acts 33 and 46 of the year 1921, and on August 10, 1926, the Police Jury, as the governing authority for said district, had levied said tax of seven mills upon all the property in said district, a copy of the ordinance levying the same having been published in the official journal of said parish on August 19th to September [fol. 106] 23, 1926, inclusive, all of which was done prior to the institution of this suit by complainant; (c) That in paragraph "n" of Section 14, Art. 14 of the said Constitution of 1921, and Secs. 33, 34, 35, 42 and 43 of Act 46 and Sec. 11 of Act 118 of the Legislature of Louisiana for the year 1921, the right of persons to resort to the courts "for the purpose of questioning the validity of the election, the bonds or the taxes levied, imposed and assessed for the purpose of paying said bonds in principal and interest, was limited to sixty days from the date of the promulgation of the result of the election", which respondent pleaded in bar of complainant's right to institute this suit; (d) That sec. 43 of Act 46 of 1921 provides:

"If any resolution be adopted or proceeding had, more than thirty (30) days after the promulgation of the result of the election, no contest, action or proceeding to question the validity or legality of such resolution or proceeding so adopted, shall be begun in any Court by any person for any cause whatsoever, after the expiration of thirty (30) days from the date when the resolution was adopted, or proceeding had."

That more than thirty days had expired from the promulgation of the result of said election before this suit was brought, and respondent also pleaded the same in bar of this action; (e) That the assessment upon the tax rolls and the valuation of complainant's property was fixed by the Louisiana Tax Commission, after due notice and hearing, as well as that of other tax payers; that said assessment rolls were filed with the Clerk of the Court of Bossier Parish, on October 6, 1926, and that under Act No. 97 of the Legislature of 1924 the complainant and all other persons making return of property for taxation had thirty days thereafter within which to contest the correctness or legality [fol. 107] of said assessment, but that complainant did not avail itself of said right and the same had prescribed, which prescription of thirty days respondent also specially pleaded.

Respondent then answered the bill seriatim, admitting the jurisdictional averments, but otherwise denying the illegality or irregularity of the proceedings by which the property was assessed and the tax levied or that the said road district had been created in bad faith.

As to the motion to dismiss, even if we should find that the railroad company had no right to sue in behalf of the Bridge Company, it would still have a standing to assert its own case. The bill, in our opinion, is sufficiently definite to permit defendant to urge his defense and the plea of want of equitable relief will be disposed of along with the merits.

The issues involved may, therefore, be disposed of by answering the following question:

(1) Did the inclusion of all of the Parish except a small portion lying on the north and east sides, amounting to some 25,000 acres, have the effect of invalidating the tax proceedings?

(2) Did the levying of a tax upon the assessment of 1926 to pay installments of principal and interest of the bonds falling due March 1, 1927, violate the Constitution and statutes of the State?

(3) Will the complainant be injured or benefitted in its property rights and has it shown any standing to complain

on that score under the constitutional guaranty of equal protection under the laws of the State?

(4) Has complainant been discriminated against in the [fol. 108] matter of assessment and if so, can it be heard to complain at this time?

(5) Does the tax impose an undue burden on interstate commerce contrary to the Federal Constitution?

(6) Will the fact that the tax to be paid by complainant will be devoted to building a highway over which vehicles competing with it for business will be allowed to operate, have the effect of depriving complainant of its property without due process of law under the Fourteenth Amendment to the Constitution of the United States?

(7) Does the Act 118 of 1921, carrying into effect the provisions of the Constitution of the state of 1921 afford it an opportunity to be heard on the question of benefits to its property and if not, is the nature of the tax such as to entitle it to such hearing?

(1) With respect to the first question as to whether the omission of a small portion of the parish from the road district has had the effect of invalidating the tax as an "obvious" attempt to evade the constitution and statute, the Legislature at its session in 1924, submitted an amendment to the constitution of 1921, which was duly adopted by a vote of the people, omitting the former provision prohibiting the inclusion of the whole of a parish within a road district, the amendment in question reading as follows:

"The Legislature may, by general law, authorize the Police Juries to create Road Districts and Sub-Road District, comprised of territory either wholly within a Parish, or partly within two or more Parishes."

It is true that this was not an act of the Legislature which could be construed as a repeal of the provisions of Act No. 118 of 1921, but it is significant that the method of adopting the amendment was by a proposal of the Legislature in [fol. 109] which two-thirds of its members had to concur and the point, under the circumstances, cannot be said to involve any question of state policy. In any event, it is

sufficient to say that even as the law formerly stood, it was left to the discretion of the police jury as to just how much of the parish less than the whole should be included in the road district, just so long as the whole was not embraced. The line of complainant's road, as shown by the map attached to its bill, runs from the north end of the parish in a southerly direction, through the western portion thereof, to the city of Shreveport, and the territory omitted is some miles away on the east and northern edges of the parish, in such manner that it is clear that there is no indication that the police jury "extended" the limits so as to embrace complainant's property. There is no substantial evidence to show any bad faith on the part of the police jury, and since the matter had to be determined by that body, the court cannot substitute its own judgment therefor so long as there has been no violation of the constitution and statutes. Besides, this matter involved purely a local law, as to which we think, if there was any irregularity or illegality, same was cured by the prescription or peremption of sixty days' provided by paragraph "n" of Sec. 14, Art. 14 of the state Constitution. Hardin vs. Police Jury of Vernon Parish, 155 La., 899; Roberts vs. Evangeline Parish School Board, 155 La. 331.

(2) It is shown that the bonds were all dated March 1st, 1926, and that the interest thereon was payable semi-annually on the first days of March and September of each year. Therefore, the first payment of interest had to be made on September 1, 1926, and the second on March 1, [fol. 109a] 1927. The court will take cognizance of the fact that assessments of property in the state of Louisiana are made in the spring and summer of the year in which taxes are collected and that no collection of taxes is made until the rolls are filed in the fall. Hence it was not possible to levy and collect the taxes to pay at maturity the installment of interest falling due on March 1, 1927, upon the tax roll of that year. What the police jury did was to levy sufficient taxes upon the assessment of 1926 to pay the interest maturing September 1, 1926 and March 1, 1927. We do not believe that the language of the Constitution and of the statute, which are practically the same, providing that

the "Subdivisions shall impose and collect annually, in excess of all other taxes, a tax to pay the interest accruing annually or semi-annually, and the principal falling due each year" is susceptible of the construction that the money collected upon the rolls of a particular year must be devoted solely to the payment of amounts maturing within that calendar year. Both the framers of the constitution and the members of the Legislature, it must be assumed, were aware of the facts above related with respect to the assessment and collection of taxes and that circumstances might be such that the principal and interest, since the latter was expressly permitted to be made payable semi-annually, would mature just in the manner and at the time as were adopted in this instance, and that it would not be possible to timely collect on the assessment of any year the money to pay installments falling due from, say the first of January to the filing of the tax rolls. It is not contended, and as a matter of fact there has not been imposed a greater tax upon the assessment of the year 1926 than was sufficient to pay the principal and interest upon the bonds maturing [fol. 110] within the period of one year. In other words, the burden of the tax payer for the year 1926 is no greater than if the interest had been payable annually and the levy of 1926 had been made to pay the interest maturing at the end of the year. There had to be a beginning and hereafter and until the bond issue is discharged the tax payer will no doubt pay the principal and interest as they become due.

(3) (6) (7) Questions 3, 6 and 7 will be considered together. They involve the issue as to whether or not the taxes are of such a nature that the complainant may raise the question of benefits and if so, was it afforded an opportunity to be heard thereon under the equal protection and due process clauses of the Federal Constitution. These identical questions have been so fully covered by the recent decision of the Court of Appeals for this Circuit in the case of Wight vs. Police Jury, 264 Fed. Rep. 707, that we quote at length from its disposition of the matter, beginning on page 708, and which we think is a complete answer to complainant's contention, to-wit:

"Article 292 of the Constitution of Louisiana (which corresponds with Sec. 14 Art. XIV of the Const. of 1921),

as published after the convention of 1913, provides for the division of parishes into road districts, and defines the taxing and bond-issuing capacity of the districts. Such legislation as is necessary to make the constitutional provisions effective is provided by Act No. 183 of 1914 and preceding statutes. The Constitution provides that 'Police Juries of this state may form their respective parishes into road districts.' No provision is made by the Constitution or a statute for notice to taxpayers of contemplated action by the police jury in the formation of districts, and in none of the cases under consideration was notice given. Provisions are made for notice of bond and tax elections, and for publication of the result, and the terms of the law have, in these respects in each instance been observed.

It is contended that the law as written and administered is unconstitutional because the law does not require notice, [fol. 111] and no opportunity is in fact given the taxpayers to be heard on the questions of the necessity or advisability of the creation of a road district, nor as to boundaries, nor as to whether property to be included would be benefitted, nor as to the rate and duration of the tax, or the amount of the bonds.

Communication, transportation, and commerce are distinguishing elements of civilization. To their development highways are essential. The construction and maintenance of good roads has been accepted universally as a function of government. In the United States there was an early recognition of the right of the general government to construct, or aid in the construction of national highways; but the duty of providing roads was primarily in the states, and in the states the duty remains.

After the success of the steam railroads was demonstrated, the attention of the federal and state governments was, for a number of years, especially directed towards their development. Aid was extended by the United States, by the states, by counties, parishes and municipalities. Though these highways have, ordinarily, been privately owned, the right of the state to levy taxes and appropriate property to help in their construction, and to authorize like action by their governmental subdivisions, has almost uniformily been sustained.

The extraordinary development of the country has brought about conditions under which the needs for transportation facilities can no longer be met by the railroads, and by the inferior dirt roads along which the pioneers have made their weary and wasteful way. Communities which have heretofore recognized the necessity of freeing themselves from the burdens of ignorance, and have provided public schools have come to realize that getting out of the mud is another essential step to that end. They realize that good roads are the complement of the school house; that isolation is not only an ally of ignorance, but of poverty; that prosperity in farming, trading, or manufacturing waits on transportation and communication.

A tardy recognition of these fundamental facts has brought about activity in the issue of bonds and the levy of taxes for road purposes. The national government is taxing all the people that great interstate highways may be constructed. States are taxing all their people that roads within the state may be built. In many states subdivisions [fol. 112] have been made, or recognized, and authority given to the taxpayers therein to supplement the efforts of the state and national governments. These subdivisions for roads do not, ordinarily, take the form of improvement districts, in which specific property receiving peculiar benefits is assessed in proportion to the benefits, but are based upon the idea that the tax payers are doing a proper part in the building up of systems of roads connecting all the sections of the country, and from which they, and everybody else, must derive a benefit.

In the state of Louisiana, the parish is primarly used as the unit for road purposes; but, lest this division of the state should not bring the necessary local cooperation and supervision, provisions have been made for dividing the parishes into road districts, which, under the terms of the Constitution, became governmental subdivisions of the state. The legislation as to these governmental units recognizes that the needs of the public with reference to roads may be more imperative in some parts of the state than in others. It recognizes, also, that in some parishes or parts of parishes the people may be willing to tax themselves for good roads, while in others the conditions may be such that the taxes cannot be levied.

The creation of road districts is vested by the Constitution in the police juries of the several parishes. It is a legislative authority doubtless well assigned. It may be assumed that the necessary action can better be performed by a body more familiar with local conditions and needs than by the state Legislature. No taxpayer, and no other person, would ordinarily have a right to interfere with or participate in the exercise of this power. It is conceivable that, even in defining the necessary governmental subdivisions, the people, acting in their primary power in the formation of their Constitution, or acting through their Legislature, or acting through a special legislative body, as in the present case, might lay off the lines in such an arbitrary, unjust way, with such a palpable purpose to destroy or confiscate property, that the protection of the Constitution would not be denied. But such a possible case is not immediately under consideration.

Complainant makes the proposition that the grant of power to the police jury violates the Constitution of the United States, because no provision is made by which he, as a taxpayer, may be heard with reference to the advisability [fol. 113] of action under the authority, or in the manner in which the authority is to be exercised. There is no constitutional requirement of special notice to any particular individual of contemplated action of a general nature by a governmental body exercising general legislative or administrative functions. The Taxpayer in a proposed road district had no more right to notice of a division of the state by the proper authority into road districts than to notice of the creation of a new parish or of the division of the parish into justice wards.

The governmental functions are carried on in a general way. The forces which exist to compel conformity of public action to public opinion are open to everybody. Except in those cases in which action is contemplated directly affecting the right of an individual, as distinguished from action affecting the public generally, no person has more right to specific notice than all other persons. It is answered that all people interested in public affairs will acquire a knowledge of what is taking place among those to whom the conduct of public affairs has been trusted. And so long as the officers are acting within their authority, redress for improper conduct is political, instead of judicial.

There are certain classes of improvement districts, not supported by direct taxation, and with reference to which definite rules for determining benefits and assessments have not been prescribed by the law, where the rule may be different. Drainage, irrigation, sewerage, and street-paving districts may be of this character. In districts of this kind, the improvement may be general and the expense met by general taxes, or the improvements may bring general public benefits and also direct benefits to particular property, and the expense be met by general taxes and specific assessments, or the direct benefits to particular property may be so great, as compared to the general benefits, that equity is approximated by direct assessments in proportion to these direct benefits.

In those cases in which improvement districts are formed for the direct benefit of the property within the district, and the method of meeting the expenses of the improvement is to determine the specific benefits and to fix upon each property owner an assessment in *pro*portion, and where the law designates no method of determining the benefit and assessment other than by a reference to some commission or other tribunal, a matter of fact is presented directly involving the property rights of individuals, and [fol. 114] each person affected must have an opportunity to produce for consideration the facts pertinent to his individual case. If this opportunity is not given, even the fact that the assessment was fair may not meet the objection that the property owner is deprived of a constitutional right.

Doubtless the laws could provide for road districts, in which improvements would be made for the benefit of specific property and the improvement met by assessments against such property. The Constitution and statutes of Louisiana, however, make no provision for such improvement districts. The districts under consideration are not of this character. They are special taxing districts for the general good. They enable the construction of good roads from which every person in the state may be expected to receive some direct or indirect benefit. To undertake to apply such government activities the rules which are invoked with regard to drainage, irrigation, or other improvement districts of that character would be to entirely destroy the possibility of efficient governmental action."

It is urged by complainant that the recent decision of the Supreme Court of the United States in the Archer County case, —— —— vs. —— ——, —, U. S., —, is contrary to this ruling of the Court of Appeals. However, the two cases are easily distinguishable. In the Archer County case the power to initiate proceedings for the levying of the road tax therein involved, was vested in a few tax payers, who, in their petition were given the right to define the district, fix the amount, maturity of the tax, etc. and when submitted to the County Commissioners the latter had no option but to order an election. If carried by vote of the property taxpayers entitled to vote, then the bonds were issued and the tax levied accordingly. The Court simply held that this was in effect the abdication of its authority by the Legisla- [fol. 115] ture and the vesting of unlimited power in the petitioning taxpayers without opportunity to nonconsenting and nonvoting taxpayers to be heard. The proceeding was in no wise similar to the one here. It is settled, in fact conceded, that the Legislature itself might impose the tax without hearing on the part of anyone, and we think it equally true that it may vest that power in one of its municipal subdivisions like the police jury or governing body of a parish. Under the Constitution and laws of Louisiana the police jury is made the governing authority for road districts and the duties of defining the district, fixing the amount and duration, interest, etc. of the bond issue as well as the levying of a tax to pay the same, is intrusted to it. The fact that it must have the approval of the property taxpayers does not, in our opinion, affect its governmental status as a subdivision of the state. In the present case we think the police jury complied with all of the requirements of the constitution and laws of the state, and in view of the nature of the proceeding it is not subject to the objection urged in the Archer County case.

The Constitution and statutes of the state, for a period of sixty days after the promulgation of the result of the election, afforded the complainant the right to attack the bond issue and tax for the payment thereof "for any cause" but thereafter "The authority to issue the bonds, the legality thereof and the taxes necessary to pay the same shall be conclusively presumed and no court shall have authority to inquire into such matter." It has been held by the Su-

preme Court of this state that this provision affords ample opportunity to be heard in the courts and if not exercised the right is forever lost. Hardin vs. Police Jury and Rob- [fol. 116] erts vs. Evangeline School Board, supra; Brock vs. Police Jury, 159 La. 66; Fontenot vs. Miller Gravity Drainage Co. District, 159 La. 302; Chiara vs. La Fourche-Terre Bonne Drainage District, 159 La. 422; Henderson Land & Planting Company vs. Police Jury, 159 La. 731. A similar view of the matter has been pronounced by the Supreme Court of the United States in Davidson vs. New Orleans, 96 U. S., 616, from which we quote, beginning at page 619, as follows:

"Whenever by the laws of a State, or by State authority, a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be of the whole State or some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice, with such notice to the person, or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceeding cannot to be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections."

(4) The assessment laws of the state afford taxpayers full opportunity to be heard upon the valuation and amount of their assessments. In fact, public service corporations like the complainant, are assessed, after full hearing if desired, by a state board known as the Louisiana Tax Commission which presumably is not influenced by local conditions. For thirty days after the filing of the final assessment rolls, the taxpayer is permitted to go into the courts for the purpose of contesting his assessment and if not done within that time, then he is expressly precluded from doing so thereafter. Act 97 of 1924. We think this provision reasonable for the state is entitled to fix some time after which the right to collect taxes for its own alimony and that of its subdivisions will be set at rest, and unless the provision is [fol. 117] unreasonable we see no reason why anyone should have a right to complain if they fail to avail themselves of that privilege. Se- authorities cited above.

(5) We are of the opinion that the contention that the taxes in question imposed an undue burden on interstate commerce is without merit. The same argument could with equal force be applied to any tax levied upon the physical property of a common carrier located within the state or within one of its taxing districts. Besides, both as to this question and the one immediately preceding, complainant has alleged its willingness to pay the ordinary state and parish taxes upon the basis of this same assessment and gives us its reason for not going so the refusal of the tax collector to accept the same.

For the reasons assigned we think the preliminary injunction should be denied.

A decree in accordance with these views may be presented.

Done and signed at Shreveport, Louisiana, this the 12th day of March, A. D., 1927.

Ben C. Dawkins, U. S. D. J.

[File endorsement omitted.]

[fol. 118] In United States District Court

[Title omitted]

Decree—Filed April 1, 1927

This cause came on to be heard at this time and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

That the rule to show cause herein issued be recalled, the application for a preliminary injunction be refused, the motion to dismiss the bill of complaint be sustained, and the bill of complaint be dismissed at the cost of the complainant, together with statutory damages of ten per centum (10%) upon the amount of the taxes in principal and interest, the collection of which is herein sought to be enjoined, as fees allowed the attorney for the tax collector, J. H. Nattin, Defendant.

Done and signed this 1st day of April, 1927.

Rufus E. Foster, Circuit Judge. Ben C. Dawkins, Louis H. Burns, Judges.

[File endorsement omitted.]

[fol. 119] IN UNITED STATES DISTRICT COURT

MOTION FOR APPEAL—Filed April 1, 1927

[Title omitted]

Now comes the Plaintiff, St. Louis Southwestern Railway Company through its undersigned attorneys, and feeling itself aggrieved by the interlocutory decree of this Court refusing to grant the complainant a temporary writ of injunction or restraining order directed against defendant, shows that the said decree is contrary to the law and the evidence and that it is entitled to appeal therefrom.

Complainant further shows that pending said appeal irreparable injury may be inflicted upon complainant and its property which is used in interstate commerce unless a supersedeas be entered herein and a restraining order be directed to defendants restraining them from proceeding with the collection of the seven mills road tax of the Consolidated Road District of Bossier Parish, Louisiana, until the final disposition of this appeal.

In connection with this petition complainant herewith presents its assignment of errors.

Wherefore, petitioner prays that an appeal be allowed it from said decree to the Honorable Supreme Court of the United States and an order of supersedeas will be entered herein and a restraining order be issued directed to defendants restraining them and each of them from further proceeding with the collection of the seven mills road tax of the Consolidated Road District of Bossier Parish, Louisiana, sought to be enjoined in this proceeding, pending the final disposition of this appeal, on petitioner giving bond in such amount as may be fixed by the order allowing this appeal.

Wilkinson, Lewis & Wilkinson, Attorneys for Complainant.

[fol. 120] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed April 1, 1927

Considering the above and foregoing motion for appeal filed by the plaintiff herein, it is ordered that the plaintiff

be granted an appeal returnable to the Honorable Supreme Court of the United States on the 1st day of May, 1927, and that an order of supersedeas be entered herein and a restraining order or temporary injunction be issued directed to the defendants, J. H. Nattin, Tax Collector and the Consolidated Road District for the Parish of Brossier, Louisiana, restraining, enjoining and prohibiting them and each of them from further proceeding with the collection of the special road tax of seven mills assessed against the property of the St. Louis Southwestern Railway Company and the Shreveport Bridge & Terminal Company on the tax rolls for the year 1926 by the Consolidated Road District No. 1 of Bossier Parish, Louisiana, said restraining order to remain in full force and effect, pending the final hearing and disposition of this appeal on appellant giving bond in the amount of Twenty Thousand Dollars with good and proper sureties and conditioned as the law requires, and further conditioned on the payment by complainant of any and all taxes, accrued or accruing, with interest thereon, in favor of respondents, and against appellant's property in the said Consolidated Road District pending the final determination of this cause, together with interest on money which may be borrowed by respondents as a necessary result of the restraining order herein granted, and any other damages suffered by respondents as a result of this restraining order in the event that the judgment and decree herein rendered should be affirmed on appeal.

Thus done and signed this 1st day of April, 1927.

Rufus E. Foster, Circuit Judge. Ben C. Dawkins, Louis H. Burns, District Judges.

[File endorsement omitted.]

NOTE.—(The above order having been allowed and signed in open Court with all parties to this litigation present, no Citation was necessary, hence none issued and served.)—W. B. Lee, Clerk.

[fol. 121] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed April 1, 1927

Now comes the appellant, the St. Louis Southwestern Railway Company, through its undersigned attorneys, and in connection with its petition for appeal says that in the record, proceedings and in the decree herein manifest error has intervened to the prejudice of appellant, to-wit:

1. The Court erred in finding that Act 118 of the General Assembly of Louisiana for the year 1921, authorizing the creation of defendant district and the levy of the tax herein in controversy, did not deprive complainants of its property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

2. The Court erred in finding that the Ordinance of the Police Jury of Bossier Parish, creating Consolidated Road District of the Parish of Bossier, did not deprive complainant of its property without due process of law in contravention of said Amendment.

3. The Court erred in finding that the Ordinance of the Police Jury of Bossier Parish, levying the tax against complainant's property herein complained of, did not unlawfully deprive complainant of its property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

4. The Court erred in finding that the tax against complainant's lands was a general tax and not a special assessment.

5. The Court erred in finding that the failure of said Act 118 to give complainant notice and an opportunity to be heard upon the question of whether its lands would be benefited by the proposed improvement before said District embracing its property was created by the said Police Jury did not unlawfully deprive it of its property without due process of law and in contravention of said Amendment.

6. The Court erred in finding that the failure of said Act 118 to give complainant notice and an opportunity to be heard upon the amount of benefits to be assessed against its property on account of said improvement before said tax was levied, did not deprive complainant of its property without due process of law in contravention of said Amendment.

7. The Court erred in finding that Act 118, in providing that the question of the creation of said District and the issuance of the obligations for which said tax is levied should be determined by the owners of property within said District at an election in which Complainant was expressly excluded, did not deny complainant of the equal protection of the laws in contravention of said Amendment.

[fol. 122] 8. The Court erred in finding that the imposition under the authority of the State of Louisiana of the advalorem tax against the full value of the property of the Complainant and against but approximately one-half the value of other property in the District did not unlawfully deprive Complainant of the equal protection of the laws contrary to said Amendment.

9. The Court erred in finding that the collection of said tax under the authority of said State would not unlawfully deprive Complainant of its property without due process of law contrary to said Amendment.

10. The Court erred in failing to find that the improvements on account of which said tax is levied would not benefit complainant or its property, and in failing to find that the assessment of special taxes against Complainant's property to pay for the construction of a competing system of hard surfaced highways to the injury and damage to Complainant's interstate railroad business imposes an undue burden on interstate commerce in violation of Section 8 of Article 1 of the Constitution of the United States, and is a taking of Complainant's property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

11. The Court erred in failing to find that said tax is grossly and palpably in excess of the benefits which Com-

plainant's property will receive on account of the proposed improvement.

12. The Court erred in failing to find that said tax arbit-arily imposes a grossly and palpably unfair, unjust, disproportionate and discriminatory burden upon Complainant as compared with other property owners in the District.

13. The Court erred in declining to follow the authority of the decision of the Supreme Court in the case of Browning vs. Hooper, 269 U. S., 396; 70 L. Ed. 330.

14. The Court erred in holding that the prescription periods of thirty and sixty days provided by Act 46 of 1921, Act 97 of 1924, Act 118 of 1921, of the Legislature of Louisiana, and Section 14 of Article 14 of the Constitution of Louisiana are applicable to the issues in this case.

15. The Court erred in upholding the validity of the ordinance of the Police Jury of Bossier Parish, Louisiana, creating Consolidated Road District No. 1 in said Parish, said ordinance being in contravention of a prohibitory law, to-wit: Act 118 of 1921 of the Legislature of Louisiana, which said act prohibits the creation of a road district comprising the whole territory of a Parish.

16. The Court erred in holding that the ordinance creating Consolidated Road District No. 1 in said Parish in omitting an insignificant part of said Parish from said District was not a sham and pretense made for the purpose of evading the letter and violating the spirit of Act 118 of 1921 enacted by the Legislature of Louisiana.

17. The Court erred in holding that under the laws of Louisiana a tax might be levied in the year 1926 to pay the principal and interest of bonds falling due in the years 1926 and 1927.

[fols. 123-133] Wherefore appellant prays that the decree of this Court of —— —, ——, may be reversed and that an injunction or temporary restraining order be granted to appellant restraining the defendants, J. H. Nattin, Tax Collector, and the Consolidated Road District of Bossier Parish, Louisiana, through its President, J. G. McDade, from levying, assessing or attempting to collect the seven mills road tax levied by the Consolidated Road District of Bossier Parish, La., for the year 1926, based upon the

assessment against petitioner's property, and that of the Shreveport Bridge & Terminal Company in said District; for all orders and decrees necessary and for such general relief as the appellant may in good conscience be entitled to under the facts and the law of this case, and for all of which it shall ever pray.

Wilkinson, Lewis & Wilkinson, Solicitors for Appellant.

[File endorsement omitted.]

[fol. 134] IN UNITED STATES SUPREME COURT

ORDER ENLARGING THE TIME FOR FILING TRANSCRIPT—Filed April 29, 1927

On motion of the St. Louis and Southwestern Railway Company, and on suggesting to the Court that on account of the voluminous record, it has been impossible to complete the narrative of the testimony and the exhibits;

And on further suggesting that it is impossible to complete the record in time to docket the cause and file the transcript with the Clerk of the Supreme Court by May 1, 1927;

And on further suggesting that the case cannot be reached by the Supreme Court before the October 1927, Term, and the ends of justice will not suffer from a delay in filing the transcript;

And on further suggesting that in order to submit the narrative form of the evidence to the Court for its approval and complete the record, it will be necessary that a further enlargement of the time for filing the record until June 1, 1927, be granted;

[fol. 135] It is ordered that the time within which the transcript in this case shall be returnable to the Supreme Court is hereby enlarged from the present expiration date of May 1, 1927, until June 1, 1927.

Rufus E. Foster, Circuit Judge. Louis H. Burns, District Judge. Ben C. Dawkins, District Judge.

Dated April 22, 1927.

Filed April 26, 1927. W. B. Lee, Clerk U. S. Dist. Court, West. Dist. of Louisiana.

[fol. 135a] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA, CLERK'S OFFICE

CERTIFICATE OF CLERK OF COURT

I, W. B. Lee, Clerk of the United States District Court for the Western District of Louisiana, do hereby certify that the foregoing two pages contain a full, true, and correct copy of order enlarging time for filing transcript in a cause entitled St. Louis Southwestern Ry. Co. versus J. H. Nattin, Tax Collector, Consolidated Road District of the Parish of Bossier, Louisiana, No. 278 on the Equity docket of said court, as the original of same appears on file in this office.

Witness my hand and seal of office at the City of Shreveport, Louisiana, on this the 27th day of April, A. D. 1927.

W. B. Lee, Clerk U. S. District Court, Western District of Louisiana. [Seal.]

[Endorsed:] No. 278. In Equity. United States District Court, Western District of Louisiana. St. Louis & Southwestern Ry. Co. vs. J. H. Nattin, Tax Collector, Consolidated Road District of Parish of Bossier, La. Order enlarging time for filing transcript. Copy: Certificate under seal Filed April 26, 1927. W. B. Lee, Clerk U. S. District Court, Western District of Louisiana.

[fol. 135b] [Filed endorsement omitted.]

[fol. 136] IN UNITED STATES SUPREME COURT

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed May 23, 1927

To the Honorable Clerk of the Supreme Court of the United States, Greetings:

On behalf of the appellant, we desire to submit the following statement of points to be relied upon, and parts of the record deemed necessary for the consideration of the Court in accordance with Paragraph 9 of Rule 11 of the Revised Rules of the Supreme Court of the United States.

Points to be Relied Upon by Appellant

1

That the creation of a consolidated road district of Bossier Parish, Louisiana, was illegal, being in violation of Act 118 of 1921, passed by the Legislature of Louisiana, prohibiting the creation of a road district comprising the whole trovention of a prohibited law is void.
Civil Code which provides that whatever is done in controvention of a prohibited law is void.

2

That Act 118 of 1921, passed by the Legislature of Louisiana, does not provide for any notice or hearing to any tax payer relative to the creation of a consolidated road dis- [fol. 137] trict, and the inclusion of the tax payers' property therein; That said act not only denies to complainant the right to a hearing relative to the creation of a consolidated road district and the issuance of bonds, but in Section 18 thereof, denies complainant any right to question the creation of the district, or the validity of the bonds; that, accordingly, said Act of the Legislature of Louisiana, provides for a taking of complainant's property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

3

That in this case, the defendants, by seeking to tax the property of complainant for the building of competing highways which will have the effect of decreasing complainant's freight and passenger earnings, amounts to confiscation of complainant's property and a taking thereof without compensation, and without due process of law, in controvention of Article 14 of the Constitution of the United States.

—

That the seven mills tax levied by the consolidated road district of Bossier Parish, Louisiana, is illegal because it was levied on property assessed for taxes in the year 1926

to pay interest on bonds for the years 1926 and 1927, in contravention of Article 14, Section 14, of Paragraph A of the Constitution of Louisiana, adopted in the year 1921, providing that the governing authorities shall impose and collect, annually, a tax sufficient to pay the interest and bonds falling due each year.

5

That the property of the complainant railroad was arbitrarily assessed at a higher proportion of its value than other property in the consolidated road district of Bossier Parish, Louisiana, and that such discrimination in assess-[fol. 138] ment denies to complainant equal protection under the law, which amounts to a taking of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

6

That the assessment and tax complained of unlawfully burdens the interstate commerce of complainant railroad by imposing upon the revenue accruing therefrom an unlawful, unjust, discriminatory tax, in violation of Article 1 Section 8 of the Constitution of the United States providing for the regulation of commerce between the states.

7

Appellant further intends to rely upon each and every point raised in the assignment of errors herein filed and incorporates said assignment of errors herein and as a part hereof, the same as if it were recited at length herein.

In view of the premises, you are hereby instructed to incorporate in the printed record the following portions of the transcript:

1. Complaint in equity.
2. Amended complaint.
3. Motion to dismiss.
4 Answer of defendants.
5. Narrative statement of the evidence taken on trial of the application for preliminary injunction.
6. Assignment of errors.

7. This statement of points intended to be relied upon by appellant, and designation of the parts of the record to be printed.

8. Written opinion of Judge Dawkins.

Respectfully submitted.

Wilkinson Lewis & Wilkinson. J. D. Wilkinson, Huffman Lewis, W. S. Wilkinson, J. R. Turney, Attorneys for complainant.

[fol. 139] I hereby certify that a copy of the above and foregoing statement of points to be relied upon by the complainant, and designation of the parts of the record to be printed in this cause, has been served upon opposing counsel, in accordance with the rules of court.

W. S. Wilkinson, of Counsel.

[fol. 139a] [File endorsement omitted.]

[fol. 140] In the Supreme Court of the United States

Designation of Additional Parts of Record to be Printed—Filed June 7, 1927

To the Honorable Clerk of the Supreme Court of the United States, Greetings:

On behalf of the appellant we desire to supplement our previous designation of matters to be printed in the record of the above numbered and entitled cause, so as to add thereto the following:

1. Judgment and decree.

2. Motion for appeal filed by complainant.

Respectfully submitted.

J. R. Turney, Wilkinson Lewis & Wilkinson, by W. S. Wilkinson, Attorneys for Appellant.

I hereby certify that a copy of the above and foregoing designation of additional parts of the record to be printed in this cause has been served upon opposing counsel in accordance with the rules of court.

This 6th day of June, 1927.

J. R. Turney, Wilkinson Lewis & Wilkinson, by W. S. Wilkinson, Attorneys for Appellant.

[fol. 141] [Endorsed:] In the Supreme Court of the United States. No. 1144. October Term, 1926. St. Louis Southwestern Railway Co., complainant and appellant, vs. J. H. Nattin et al., defendant and appellee. Designation of additional parts of the record to be printed. J. R. Turney, Wilkinson Lewis & Wilkinson, attorneys for complainant.

[fol. 142] [File endorsement omitted.]

Endorsed on cover: File No. 32,711. D. C. U. S., W. Louisiana. Term No. 263. St. Louis & Southwestern Railway Company, appellant, vs. J. H. Nattin, tax collector Consolidated Road District of the Parish of Bossier, Louisiana. Filed May 23rd, 1927. File No. 32,711.